

MONTANA LEGISLATIVE HISTORY

Chapter 562 19 95Bill H _____ S 136 Original bill & history ☒ cH. Committee on Rules

Hearing Date(s) _____ c

There are no _____ c
minutes for this _____ c
committee. _____ c

Date Out _____ c

S. Committee on JudiciaryHearing Date(s) Jan 25 ☒ cMar 27 ☒ c

_____ c

_____ c

Mar 28 ☒ cDid this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

Free Conference Committee

Apr 11 ☒ c

Senate Select Judiciary

Feb 04 ☒ cFeb 09 ☒ cFeb 11 ☒ cFeb 13 ☒ cFeb 14 ☒ c

Blainard

Denny

for Haygood

Bill "Emerson"

SENATE BILL NO. 136

INTRODUCED BY

Donner Keenan

Benjamin Carson

Thomas Gore Jenkins

Charles Keating

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS CONCERNING ETHICS; CHANGING ETHICAL GUIDELINES INTO REQUIREMENTS; REQUIRING LEGISLATORS TO DISCLOSE INTERESTS RAISING THE APPEARANCE OF IMPROPRIETY AND TO REFRAIN FROM VOTING ON CERTAIN MATTERS; PROHIBITING A PUBLIC EMPLOYEE WHO IS A LEGISLATOR FROM RECEIVING BOTH SALARIES WHILE SERVING IN THE LEGISLATURE; PROHIBITING PUBLIC OFFICERS AND PUBLIC EMPLOYEES FROM USING PUBLIC TIME, EQUIPMENT, FACILITIES, SUPPLIES, OR FUNDS TO PROMOTE POLITICAL IDEOLOGY OR TO INFLUENCE A POLITICAL ISSUE; AND AMENDING SECTIONS 2-2-104, 2-2-105, 2-2-112, 2-2-121, AND 2-2-125, MCA."

WHEREAS, Article XIII, section 4, of the Montana Constitution is unambiguous in its intent of prohibiting conflict between public duty and private interest for members of the Legislature and for all state and local government officers and employees; and

WHEREAS, Title 2, chapter 2, part 1, MCA, implementing Article XIII, section 4, of the Montana Constitution, dilutes the spirit, purpose, and intent of the constitutional mandate.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-2-104, MCA, is amended to read:

"2-2-104. Rules of conduct for all public officers, legislators, and public employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached ~~his~~ a fiduciary duty. A public officer, legislator, or public employee may not:

(a) disclose or use confidential information acquired in the course of ~~his~~ official duties in order to further substantially ~~his~~ the person's personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) ~~which that~~ would tend improperly to influence a reasonable person in ~~his~~ the person's position to depart from the faithful and impartial discharge of ~~his~~ the person's public duties; or

(ii) ~~which he that the person~~ knows or ~~which that~~ a reasonable person in ~~his~~ that position should

1 know under the circumstances is primarily for the purpose of rewarding ~~him~~ the person for official action
2 ~~he has~~ taken.

3 (2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest
4 substantially lower than the commercial rate then currently prevalent for similar loans and compensation
5 received for private services rendered at a rate substantially exceeding the fair market value of ~~such~~ the
6 services. Campaign contributions reported as required by statute are not gifts or economic benefits
7 tantamount to gifts.

8 (3) A public employee who is also a legislator may not draw a salary for the public employee
9 position during the time the public employee is compensated as a legislator."

10
11 **Section 2.** Section 2-2-105, MCA, is amended to read:

12 **"2-2-105. Ethical ~~principles~~ requirements for public officers and employees.** (1) The ~~principles~~
13 requirements in this section are intended as ~~guides to~~ mandatory rules of conduct, and ~~do not constitute~~
14 violations ~~as such~~ constitute a breach of the public trust and fiduciary duty of office or employment in state
15 or local government. A violation of this section is subject to disciplinary action and a civil penalty of not
16 less than \$50 or more than \$1,000.

17 (2) A public officer or employee ~~should~~ may not acquire an interest in any business or undertaking
18 ~~which he~~ that the officer or employee has reason to believe may be directly and substantially affected to
19 its economic benefit by official action to be taken by ~~his~~ the officer's or employee's agency.

20 (3) A public officer or employee ~~should~~ may not, within the months following the voluntary
21 termination of ~~his~~ office or employment, obtain employment in which ~~he~~ the officer or employee will take
22 direct advantage, unavailable to others, of matters with which ~~he~~ the officer or employee was directly
23 involved during ~~his~~ a term of office or during employment. These matters are rules, other than rules of
24 general application, ~~which he~~ that the officer or employee actively helped to formulate and applications,
25 claims, or contested cases in the consideration of which ~~he~~ the officer or employee was an active
26 participant.

27 (4) A public officer or employee ~~should~~ may not perform an official act directly and substantially
28 affecting a business or other undertaking to its economic detriment when ~~he~~ the officer or employee has
29 a substantial financial interest in a competing firm or undertaking."
30

Section 3. Section 2-2-112, MCA, is amended to read:

"2-2-112. **Ethical ~~principles~~ requirements for legislators.** (1) The ~~principles~~ requirements in this section are intended ~~only~~ as ~~guides to~~ mandatory rules for legislator conduct, and ~~do not constitute~~ violations ~~as such~~ constitute a breach of the public trust and the fiduciary duty of legislative office. A violation of this section is subject to disciplinary action and a civil penalty of not less than \$50 or more than \$1,000.

(2) When a legislator ~~must~~ is required to take official action, including voting, on a legislative matter as to which ~~he~~ the legislator has a conflict created by a personal or financial interest ~~which that~~ would be directly ~~and substantially affected by~~ or collaterally give rise to an appearance of impropriety as to the legislator's influence, benefit, or detriment in regard to the legislative matter, ~~he should consider disclosing or eliminating~~ the legislator shall disclose and eliminate the interest creating the conflict or ~~abstaining~~ abstain from the official action. In making ~~his~~ a decision, ~~he should~~ the legislator shall further consider:

(a) whether the conflict impedes ~~his~~ the legislator's independence of judgment;

(b) the effect of ~~his~~ the legislator's participation on public confidence in the integrity of the legislature; ~~and~~

(c) whether ~~his~~ the legislator's participation is likely to have any significant effect on the disposition of the matter; and

(d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the legislator's participation.

(3) A conflict situation does not arise from legislation ~~affecting~~ that does not directly or significantly affect the entire membership ~~of~~ in a profession, occupation, or class. If a legislator or a person connected with a legislator by consanguinity within the fourth degree or by affinity within the second degree is a public employee and a member of a profession, occupation, or class affected in any way by the legislation, the legislator shall refrain from participation in the action.

(4) ~~If a~~ A legislator ~~elects to~~ shall disclose the interest creating the conflict and refrain from participation in the action, he shall do so as provided in the joint rules of the legislature."

Section 4. Section 2-2-121, MCA, is amended to read:

"2-2-121. **Rules of conduct for ~~state~~ public officers, legislators, and ~~state~~ public employees.** (1) Proof of commission of any act enumerated in ~~this section~~ subsection (2) or (3) is proof that the actor has

1 breached ~~his~~ a fiduciary duty.

2 (2) A ~~state~~ public officer, a legislator, or a ~~state~~ public employee may not:

3 (a) use ~~state~~ public time, facilities, or equipment for ~~his~~ private business purposes;

4 (b) engage in a substantial financial transaction for ~~his~~ the officer's or employee's private business
5 purposes with a person whom ~~he~~ the officer or employee inspects or supervises in the course of ~~his~~ official
6 duties;

7 (c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or
8 other economic benefit from ~~his~~ the officer's or employee's agency;

9 (d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic
10 benefit from any ~~state~~ agency;

11 (e) perform an official act directly and substantially affecting to its economic benefit a business or
12 other undertaking in which ~~he~~ the officer, legislator, or employee either has a substantial financial interest
13 or is engaged as counsel, consultant, representative, or agent; ~~or~~

14 (f) solicit or accept employment, or engage in negotiations or meetings to consider employment,
15 with a person whom ~~he~~ the officer or employee regulates in the course of ~~his~~ official duties without first
16 giving written notification to ~~his~~ the officer's or employee's supervisor and department director;

17 (g) use public time, facilities, equipment, supplies, or funds to promote a political ideology that
18 could potentially affect the outcome of an election; or

19 (h) use public resources to pay, supplement, or subsidize in any way a lobbyist, the media, or any
20 other method of influence intended to persuade or affect a political decision.

21 (3) A department head or a member of a quasi-judicial or rulemaking board may perform an official
22 act notwithstanding the provisions of subsection (2)(e) if ~~his~~ participation is necessary to the administration
23 of a statute and if ~~he~~ the person complies with the voluntary disclosure procedures under 2-2-131.

24 (4) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee
25 unless ~~he~~ the member is also a full-time state or local government employee.

26 (5) Subsections (2)(g) and (2)(h) do not apply to a legislator or legislative staff in the ordinary
27 course and performance of legislative duties.

28 (6)(a) A violation of this section is subject to disciplinary action and a civil penalty of not less than
29 \$50 or more than \$1,000.

30 (b) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon

1 conviction shall be punished by a fine of not less than \$50 or more than \$1,000, by imprisonment in the
2 county jail for not more than 6 months, or by both."

3
4 **Section 5.** Section 2-2-125, MCA, is amended to read:

5 **"2-2-125. Rules of conduct for local government officers and employees.** (1) Proof of commission
6 of any act enumerated in this section is proof that the actor has breached ~~his~~ a fiduciary duty subjecting
7 the actor to disciplinary action and a civil penalty of not less than \$50 or more than \$1,000.

8 (2) An officer or employee of local government may not:

9 (a) engage in a substantial financial transaction for ~~his~~ the officer's or employee's private business
10 purposes with a person whom ~~he~~ the officer or employee inspects or supervises in the course of ~~his~~ official
11 duties; or

12 (b) perform an official act directly and substantially affecting to its economic benefit a business or
13 other undertaking in which ~~he~~ the officer or employee either has a substantial financial interest or is
14 engaged as counsel, consultant, representative, or agent.

15 (3) ~~A~~ Notwithstanding the provisions of subsection (2), a member of the governing body of a local
16 government may perform an official act ~~notwithstanding this section~~ when ~~his~~ the member's participation
17 is necessary to obtain a quorum or otherwise enable the body to act, ~~if he~~ The member shall ~~complies with~~
18 ~~the voluntary disclosure procedures under 2-2-131~~ disclose and eliminate the interest creating the
19 appearance of impropriety."

20 -END-

SB 135 INTRODUCED BY COLE, ET AL.

CLARIFY REQUIREMENT THAT ACTIVITIES, SERVICES, OR FACILITIES
THAT ARE REQUIRED OF LOCAL GOVERNMENTS OR SCHOOL
DISTRICTS BY THE STATE MUST CONTAIN METHOD TO FULLY FUND
ACTIVITIES, SERVICES, OR FACILITIES

1/13	INTRODUCED		
1/13	FIRST READING		
1/13	REFERRED TO STATE ADMINISTRATION		
1/14	FISCAL NOTE REQUESTED		
1/19	FISCAL NOTE RECEIVED		
1/20	FISCAL NOTE PRINTED		
1/26	HEARING		
2/07	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	2ND READING PASSED	33	17
2/09	3RD READING PASSED	34	16
	TRANSMITTED TO HOUSE		
2/10	FIRST READING		
2/15	REFERRED TO LOCAL GOVERNMENT		
3/09	HEARING		
3/24	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED	91	6
3/29	3RD READING CONCURRED	81	19
	RETURNED TO SENATE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	26	17
4/04	3RD READING AMENDMENTS CONCURRED	40	9
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 416		
	EFFECTIVE DATE: 10/01/95		

SB 136 INTRODUCED BY BAER, ET AL.

GENERALLY REVISE LAWS CONCERNING ETHICS
BY REQUEST OF THE JOINT COMMITTEE ON ETHICS

1/13	INTRODUCED		
1/13	FIRST READING		
1/13	REFERRED TO JUDICIARY		
1/25	HEARING		
2/04	HEARING		
2/06	HEARING		
2/08	HEARING		
2/11	HEARING		
3/07	HEARING		
3/09	HEARING		
3/14	HEARING		
3/15	HEARING		
3/16	HEARING		
3/20	HEARING		
3/21	HEARING		
3/22	HEARING		
3/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/24	REREFERRED TO JUDICIARY		
3/24	FISCAL NOTE REQUESTED		
3/27	HEARING		
3/28	FISCAL NOTE RECEIVED		
3/28	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/29	FISCAL NOTE PRINTED		
3/29	MISSED TRANSMITTAL DEADLINE FOR 71ST DAY		

3/29	2ND READING PASSED AS AMENDED	35	14
3/30	3RD READING PASSED	38	12
	TRANSMITTED TO HOUSE		
3/31	FIRST READING		
3/31	REFERRED TO RULES		
4/06	HEARING		
4/06	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/08	2ND READING CONCURRED AS AMENDED	80	20
4/10	3RD READING CONCURRED	81	19
	RETURNED TO SENATE WITH AMENDMENTS		
4/11	2ND READING AMENDMENTS NOT CONCURRED	36	10
4/11	FREE CONFERENCE COMMITTEE APPOINTED		
4/11	HEARING		
4/12	REVISED FISCAL NOTE RECEIVED		
4/12	REVISED FISCAL NOTE PRINTED		
4/12	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/12	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	33	16
4/13	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	32	18
	HOUSE		
4/11	FREE CONFERENCE COMMITTEE APPOINTED		
4/12	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/12	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	86	13
4/13	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	79	21
4/18	SIGNED BY PRESIDENT		
4/18	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 562		
	EFFECTIVE DATE: 07/01/95		

SB 137 INTRODUCED BY BROOKE, ET AL.

REVISE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

1/14	INTRODUCED		
1/14	FIRST READING		
1/14	REFERRED TO NATURAL RESOURCES		
1/23	HEARING		
2/10	HEARING		
2/10	TABLED IN COMMITTEE		
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY		
	DIED IN COMMITTEE		

SB 138 INTRODUCED BY MESAROS, ET AL.

REVISE TAXATION OF CERTAIN LAND BY CHANGING CLASSIFICATION OF 1 ACRE OF QUALIFYING AGRICULTURAL LAND BENEATH CERTAIN IMPROVEMENTS FROM RESIDENTIAL TO AGRICULTURAL AND CLARIFY VALUATION OF LAND DESCRIBED IN SECTION 15-6-133(1)(C), MCA

1/14	INTRODUCED		
1/14	FIRST READING		
1/14	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
1/16	FISCAL NOTE REQUESTED		
1/17	REREFERRED TO TAXATION		

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0136, second reading

DESCRIPTION OF PROPOSED LEGISLATION:

Act generally revising laws concerning ethics for legislators, public employees, and public officers.

DESCRIPTIONS:

Commissioner of Political Practices:

Additional responsibilities for the Office of the Commissioner of Political Practices under SB0136 will include the adoption of administrative rules, formal investigation and prosecution of complaints of violation of the ethics code by state officers or state employees. This will involve acceptance of complaints, conducting hearings within the requirements of the Montana Administrative Procedures Act, and the assessment of technical violation penalties. In addition, there will be responsibility for the prosecution of alleged violations before the Montana Ethics Commission.

The ethics commission will be attached to the Commissioner of Political Practices for administrative purposes only. It is assumed that the commission will be accounted for and budgeted as a program in the office of the Commissioner of Political Practices but will operate as an autonomous commission.

It is estimated that the provisions of the bill will result in the filing of five to ten formal complaints per month (60-120 per year) and the conduct of two to five informal contested case hearings per month (24-60 per year). It is also estimated that some number of hearing decisions made by the commissioner will be further appealed to the ethics commission that will conduct an appeal hearing. In order to provide daily legal support and interpretations, complaint resolution assistance, and hearing preparation and representation, it is estimated that 1.00 FTE attorney (grade 18) will be necessary. The personal services cost for the FTE is about \$21 per hour; contract legal service obtained from Agency Legal Services in the Department of Justice is at the rate of \$53 per hour.

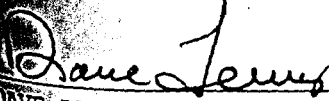
It is estimated that there will be sufficient investigatory work required to support the addition of 1.00 FTE investigator (grade 14). The personal services cost for the FTE is \$15 per hour; contract investigatory service obtained from Agency Legal Services is at the rate of \$35 per hour.

Additional staff will be necessary: 1.00 FTE (grade 11) administrative assistant to provide administrative and technical support to the attorney and investigator, and to be the initial contact point for information and requests for advisory opinions; and 1.00 FTE (grade 9) clerical support position that will also provide clerical and organizational support to the ethics commission.

It is estimated that the cost for contracted hearings officers will be \$8,000 each year. This equates to approximately 40 hearings per year x 5 hours per hearing (including pre-hearing preparation and writing decisions) x \$40 per hour.

Start-up expenses in FY96 for the additional staff include \$17,000 for remodeling the basement of the present building to provide office space and necessary exits and access, and \$17,000 for office furniture and equipment.

(continued)

 3.28.95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 3-29-95
LARRY L. BAER, PRIMARY SPONSOR DATE

Fiscal Note for SB0136, second reading

SB 136

(continued)

Commissioner of Political Practices (continued):

8. The five-member ethics commission is entitled to reimbursement for expenses as provided in Title 2, chapter 18, part 5, MCA. It is assumed that the commission will meet an average of one day per month with average reimbursement expenses of \$683.50 per meeting (5 members x \$136.70 per day; mileage (300 miles x \$0.30 = \$90) lodging (\$31.20 for one night), and meals (\$15.50 per day)). Total expenses for the year would be \$8,200 (\$683.50 x 12).

Department of Administration:

9. The estimated costs, in FY96 only, of adopting rules on standards of conduct and producing a brochure for all state employees (to include the university system) is \$4,015. These costs include copying and postage to distribute rule notices, administrative rule filing fees for the publication of rule notices, and the printing of brochures.

Department of Revenue:

10. The bill has no impact on expenditures and may result in a nominal increase in state income tax revenues due to the requirement for the department to provide information to the commissioner as necessary to determine compliance with tax return filing responsibilities.

FISCAL IMPACT:Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Commissioner of Political Practices:		
FTE	4.00	4.00
Personal Services	121,509	121,935
Operating Expenses	49,500	30,500
Equipment	<u>17,000</u>	<u>0</u>
Total	188,009	152,435
Ethics Commission (travel reimbursement):		
Operating Expenses	8,200	8,200
Department of Administration:		
Operating Expenses	4,015	0
<u>Funding:</u>		
General Fund (01)	200,224	160,635

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0136, reference bill, as amended

DESCRIPTION OF PROPOSED LEGISLATION

generally revising laws concerning ethics for legislators, public employees, and officers.

ASSUMPTIONS

Commissioner of Political Practices

Additional responsibilities for the Office of the Commissioner of Political Practices under SB0136 will include the adoption of administrative rules, formal investigation, and prosecution of complaints of violation of the ethics code by state officers, state employees, or legislators. This will involve acceptance of complaints, conducting hearings within the requirements of the Montana Administrative Procedures Act, and the assessment of technical violation penalties. The ethics commission will be attached to the Commissioner of Political Practices for administrative purposes only. It is assumed that the commission will receive staff support from the office but the direct commission expenses will be separately accounted for and it will operate as an autonomous commission.

It is estimated that the provisions of the bill, as amended to include complaints against legislators will result in the filing of eight to fifteen formal complaints per month (96-180 per year) and the conduct of three to seven informal contested case hearings per month (36-84 per year). It is also estimated that some number of hearing decisions made by the commissioner will be further appealed to the ethics commission that will conduct an appeal hearing. In order to provide daily legal support and interpretations, complaint resolution assistance, and hearing preparation and representation, it is estimated that 1.00 FTE attorney (grade 18) will be necessary. The personal services cost for the FTE is about \$21 per hour, contract legal service obtained from Agency Legal Services in the Department of Justice is at the rate of \$53 per hour.

It is estimated that there will be sufficient investigatory work required to support the addition of 1.00 FTE investigator (grade 14). The personal services cost for the FTE is \$15 per hour, contract investigatory service obtained from Agency Legal Services is at the rate of \$35 per hour.

Additional staff will be necessary. 1.00 FTE (grade 11) administrative assistant to provide administrative and technical support to the attorney and investigator and records maintenance for investigations, hearings, and disclosure statements, and to assist in telephone and reception coverage as the initial ethics unit contact point, and 1.00 FTE (grade 9) clerical support position that will also provide clerical and organizational support to the ethics commission.

It is estimated that the cost for contracted hearings officers will be \$12,000 each year. This equates to approximately 60 hearings per year x 5 hours per hearing (including pre-hearing preparation and writing decisions) x \$40 per hour.

Start-up expenses in FY96 for the additional staff include \$17,000 for remodeling the basement of the present building to provide office space and necessary exits and access, and \$17,000 for office furniture and equipment.

(continued)

me Low 4-12-95

BUDGET DIRECTOR DATE
Office of Budget and Program Planning

HARRY D. BAER, PRIMARY SPONSOR DATE

Fiscal Note for SB0136, reference bill, as amended

SB 136-#2

Fiscal Note Request, SB0136, third reading, as amended

Page 2

(continued)

Commissioner of Political Practices (continued):

8. The five-member ethics commission is entitled to reimbursement for expenses as provided in Title 2, chapter 18, part 5, MCA. It is assumed that the commission will meet an average of one day per month with average reimbursement expenses of \$683.50 per meeting (5 members x \$136.70 per day; mileage (300 miles x \$0.30 = \$90); lodging (\$31.20 for one night); and meals (\$15.50 per day)). Total expenses for a year would be \$8,200 (\$683.50 x 12).

Department of Administration:

9. The estimated costs, in FY96 only, of adopting rules on standards of conduct and producing a brochure for all state employees (to include the university system) is \$4,015. These costs include copying and postage to distribute rule notices, administrative rule filing fees for the publication of rule notices, and the printing of brochures.

FISCAL IMPACT:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Commissioner of Political Practices:		
FTE	4.00	4.00
Personal Services	121,509	121,935
Operating Expenses	53,500	34,500
Equipment	17,000	0
Total	192,009	156,435

Ethics Commission (travel reimbursement):

Operating Expenses	8,200	8,200
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Department of Administration:

Operating Expenses	4,015	0
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Funding:

General Fund (01)	204,224	164,635
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training the coordinator provides for county attorneys is invaluable.

William Hooks, State Appellate Defenders Office, remarked that he represents the people on appeal who have been convicted on felony offenses. Mr. Connor and his staff get the most labor intense cases charged in Montana. A well defended case results in fewer issues available on appeal and permits a more prompt resolution on appeal.

Mike McGrath, County Attorney for Lewis and Clark County, commented that they support SB 192.

John Northy, Legislative Auditor's Office, commented that under the Legislative Audit Act when an audit discloses an apparent penal violation in a state agency, they are required to report that fact to the governor and the attorney general. They work with the county attorney training coordinator in this matter. This function is very important to prosecuting any apparent penal violations which are disclosed in state government. This office is not limited to helping county attorneys.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR AL BISHOP questioned where the monies come from to fund this office. SENATOR VAN VALKENBURG stated the staff is funded via the state general fund. There is a charge back to county governments for certain services. This money goes back into the general fund.

Closing by Sponsor:

SENATOR VAN VALKENBURG offered no further comments in closing.

HEARING ON SB 136

Opening Statement by Sponsor:

SENATOR LARRY BAER, Senate District 38, presented SB 136. Article XIII, Section 4 of the State Constitution reads: "Code of ethics. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees." It says "shall" not "may". It says "prohibiting" not "compromising". It expressly prohibits conflict between public duty and private interests with no implication of exceptions. This constitutional directive is clear, unambiguous and mandatory under our state's supreme law of the land, yet it

has been skewed, obfuscated, and patently violated for the last 22 years. Instead of carrying out their duty directed by the Constitution, the legislature created statutes rendering the mandate of our Constitution merely discretionary. The language of 2-2-100, MCA, reads more like a license to perform rather than a prohibition of unethical conduct. There's nothing in the constitutional language which expresses nor implies that a conflict must be substantial. It simply prohibits any conflict of any kind. The language "shall prohibit" does not conform with 2-2-105(1), MCA, statutory language which says it is intended only as a guide to legislator conduct and does not constitute violations of such of the public trust. Nor does the statutory language "should consider" comply with the constitutional prohibitory requirements. The language "shall prohibit" does not exempt or exclude the membership of a profession, occupation, or class nor does it express or imply that indirect or insignificant violations should be overlooked. Nearly all of the abuses appear to be by those serving also as public employees. Because of this, stronger applications to them is appropriate with a more liberal interpretation applied to private sector legislators. What part of the words "shall prohibit" do we intelligent people not understand? This is a direct contradiction of the Constitution. Such offense of dilatory statutory language renders the definitive constitutional provision impotent. This is repugnant to the intent of the framers of our Constitution and it is a material example of why the people of Montana no longer trust their government. We have set a bad example for them. Furthermore, the statute insults the constitutional directive "shall prohibit" by giving a legislator the discretion to "elect to disclose the interest creating the conflict." Thus there is no actual statutory requirement of obedience to the Constitution nor provision for a specific power of enforcement. The code of ethics imposed upon professionals by their respective government regulatory bodies are far more restrictive than those imposed upon legislators or public employees. The ethical code of his legal profession does not even allow the appearance of impropriety. The other severe and flagrant violation of Article XIII, Section 4, is the use of public time, facilities, equipment, supplies and funds to promote a political ideology or preference intended to affect the outcome of an election or political decision. Nearly a century ago the U.S. Supreme Court held the constitutional commitment to free elections guarantees an electoral process free of partisan intervention by the current holders of government authority or the current holders of the public treasury. This should not apply to legislators since they are often advocates for constitutional amendments and other legitimate political functions while on the job. The same should hold true for the governor, lieutenant governor and their staff, less we eliminate government from politics entirely. Furthermore, department representatives provide essential information to committees and legislators during the legislative process. Therefore, provisions for such exceptions are within the bill. In Montana we arrogantly choose to permissively disregard such constitutional prohibitions in violation of our

own state Constitution. Must the legislature be humiliated by a lawsuit certifying their unwillingness or incompetence to submit to both state and federal constitutional mandates? Must Montana, as in at least eight other states, ban public employees from the legislature? He submits that this bill is a reasonable alternative to such drastic action and will fulfill the requirements demanded by compliance with our state supreme law of the land.

Proponents' Testimony:

Robert G. Natelson presented his written testimony EXHIBIT 3.

Walter J. Kero, Vice Chair Montanans for Better Government, remarked that their organizations has three concerns with regards to ethics. The reason they support SB 136 is because the public trust is the most sacred covenant government has with its citizens. SB 136 addresses the three issues of ethics reform they are concerned with: conflicts of interest, taxpayer paid lobbying, and taxpayer financed influencing of ballot issues. In regard to conflict of interest, the proposed addition to MCA 2-2-104 (3) would prohibit public employees, including teachers and professors, from drawing two paychecks at the same time. Private sector individuals who serve in the legislature do not enjoy such a position. Public employees should not be legislators or local elected officials at the same time that they are serving in the capacity of an employee. We have a member of the present Board of Regents who is also on the board of the MSU Foundation. In the private sector, if this person was a trustee on a pension plan who was also doing business with a brokerage house that was doing the investment for the brokerage plan, ERISA would prohibit such a relationship. We have had university professors voting and approving on HB 2 which is appropriations for the university. We have had public employee legislators voting on bills to accept a contract which included their own particular employment. In the last Special Session grade school children were brought to Helena to make a lobbying appearance. When the taxpayers are paying for it, I think this is questionable. The current Montana law states that public officers are charged with a fiduciary responsibility.

{Tape: 1; Side: B}

Mike Cooney, Secretary of State, commented that for the last 18 months he and members of the Ethics Advisory Council have worked closely with people from across the state to fully examine and to scrutinize the question of ethics in state government. It is clear that Montanans expect public officials to do a more effective job of making the government accountable. He would encourage the committee to closely examine the issue of enforcement. In the early 1980s, the district court ruled that the office of the secretary of state does not have the authority

to handle ethical violations. SB 136 does not resolve this conflict.

Fred Happel, Montanans for Better Government, stated there is a conflict of interest when you have someone who is receiving funds from the public sector lobbying on public sector legislation that will benefit that employee or his organization. Both of the organizations he lobbies for are funded entirely by member dues.

Leo Giacometto, Governor's Office, stated they rise in support of SB 136. The public's trust is the main concern of the governor.

Beth Baker, Department of Justice, stated they support this bill. The current laws are confusing and unworkable for public employees and private sector to understand. SENATOR BAER'S amendments address one of their principal concerns which is the role of the Department to be here and provide information to this committee.

Bill Olsen, AARP, commented that they support legislation which strengthens ethics rules.

Russ Ritter, Montana Resources, remarked that their concerns are in the area of the permitting process. Their company appears before state organizations and state committees which are involved in permitting. What they are asking is that those individuals who do have conflicts identify themselves. They are not saying they cannot belong to other organizations, they want to have them identify the organizations they represent.

Wes Higgins presented his written testimony, EXHIBIT 4.

Debra Smith, Common Cause, commented they are a proponent of reform to the ethics laws. This bill does not provide any agency with any authority to enforce its provisions. It provides for civil penalties and it makes the requirements mandatory, but no one has the authority to enforce it. Section 3 (2), which deals with impropriety, should be more specific. Section 4 would add rules of conduct for legislatures. That amends Section 121 of this part. Section 111 of this part, which is not amended, is entitled, "Rules of Conduct for Legislators". On page 5, (g) should be more specific than "use of public time". Paragraph (h) would not allow department employees, or even the governor or the lieutenant governor, to testify on behalf of a bill. All elected people should be subjected to the same rules of conduct. On page 4, (3) keeps the language concerning voluntary disclosure procedures of conflict of interest for legislators, however, (5) eliminates voluntary disclosure for local government officials and requires disclosure and elimination of an interest creating the appearance of impropriety. That is not an acceptable solution to the lack of guidance on ethics for legislators.

Arlette Randash, Eagle Forum, commented that she was recently.

contacted by a pollster. All of the questions had to do with a upcoming school board levy and how would she best be influenced to vote for or against the levy. The schools must have hired that pollster. As she was asked questions, seeds of doubt were planted in her mind as to whether the high schools in Helena were safe. Two things were happening. They were formulating how they would best influence her next vote and also suggesting that if she refused to vote for the next school levy, she was putting our children in an unsafe situation.

Raymond Babb announced his support of SB 136.

Michael Gonsior, Montanans for Better Government, commented he would favor a constitutional amendment that would prohibit public employees from seeking elective political office.

Jim Blankenship stated he supports SB 136.

Kamela Webb, Fully Informed Jury Association Director, announced their support of SB 136.

Laurie Koutnik, Christian Coalition of Montana, stated they support ethical reform.

John Rice, Montanans for Better Government, stated their support of SB 136.

Bob Balyeat, Montanans for Better Government, stated their support of SB 136.

Opponents' Testimony:

Eric Feaver, Montana Education Association, spoke in opposition of SB 136. Even if this committee would adopt the bill with amendments, there are still some questions. Page 3, lines 20 through 24, says that virtually no Montanan could serve in the legislature. How would you not be related to someone who had some interest that might be at hand? How would you not be the member of some class, occupation or profession that would not be impacted by decision of the legislature? Page 4, lines 19 and 20, appears to say that the Montana School Board Association, the School Administrators of Montana, the Montana Rural Education Association and all other entities that represent public employers would be prohibited from hiring lobbyists to lobby this legislature. He would be delighted to be the only voice on employee/employer issues before this legislature. He is the advocate of public school funding. Despite the number of teachers who have served in this legislature, Montana is spending less per pupil today than two years ago.

Mary Ann Wellbank stated she is speaking as a private citizen who happens to be employed by the state of Montana. Her interpretation of this legislation is that it specifically targets public employees and infringes on the rights of public

employees to be represented by a legislator who happens to be their peer. Section 3 (3), page 3, which provides if a legislator or a person connected with a legislator is a public employee and a member of a profession, occupation, or class affected in any way by the legislation, the legislator shall refrain from participation in the action. This legislation sets different standards for public employees and private sector employees who are legislators. Private sector employees are trusted to give careful consideration to conflicts. Public sector legislators related by blood or marriage to a public employee cannot be trusted to give careful consideration to potential conflicts and must refrain from participation in the action. Only public employees are targeted and the language is unusually broad and restrictive. Her representative lives in the Ash Grove Cement area. Because he is a public employee, he could not vote on any legislation in which a member of the class is affected by the legislation. He could not represent his constituents, 30% of whom are public employees. Legislators who are ranchers can vote on livestock and access issues. As a state employee she is entitled to the same rights and representation as any other Montana citizen.

Don Waldron, Montana Rural Education Association, stated that schools do hire him to lobby for them. He offered an amendment, EXHIBIT 5.

Larry Fasbender commented that he is a farmer, a past legislator, and a past employee of the state. He is now a lobbyist paid through public funds. He is in favor of ethics legislation, however, this bill is going too far in addressing ethics legislation.

Terry Minow, Montana Federation of Teachers, Montana Federation of State Employees, announced their strong opposition to SB 136. SB 115 seems to be a much more balanced approach to the issue of ethics in government. As a representative of public employees, it is difficult for her to listen while this bill's proponents bash public employees. They do not deserve this abuse.

Amy Pfeifer stated she is a state employee attending this hearing on her own time. She has problems with Section 1, (3), that would prohibit a public employee who is also a legislator from earning a salary during the time they are compensated as a legislator. If she took a leave of absence, she would still have the same interests. This is to discourage public employees from getting involved as legislators. There is nothing in current law, this bill, or in SB 115, which would prohibit other legislators from earning a salary while they are a legislator. She asks that state employees be subject to the same ethical restrictions as other legislators would be. Section 3 would state that if you happened to be a legislator who is a public employee or related, within very broad degrees, to a public employee you could not vote on legislative matters where there

might be a conflict of personal or financial interest. She wouldn't be able to vote on anything that affected her. Section 3, (4) seems to conflict with (2).

Mike Piccard remarked his concern with this bill is that it is overly broad. No one would argue against some type of ethical guidelines. This bill singles out public employees in a way that is inequitable. Public employees are private citizens. They work and perform a job for pay. Public employees pay property taxes, income taxes, and have the same conflicts and problems that every other private citizen has.

Informational Testimony: None.

{Tape: 2; Side: A}

Questions From Committee Members and Responses:

SENATOR GROSFIELD, referring to the last few lines of the bill, questioned the wording which stated that a local government member had to eliminate the interest creating the appearance of impropriety. Does that mean that they have to sell a business or some asset? SENATOR BAER stated that this is an existing section in the code. He is open to any suggestions on this bill that would clarify any possible ambiguities.

SENATOR DOHERTY asked if this bill would apply to all levels of government including federal and state retirees. SENATOR BAER stated we could not interfere with federal laws. Regarding state retirees, he felt there might be an area of vagueness which would need to be addressed. SENATOR DOHERTY further remarked that there is nothing in the bill which refers to a legislator who is accepting private money from investments or profession. He felt that would create equal protection problems. SENATOR BAER stated that this bill does not affect any activity by a public employee on his own time and using his own resources. SENATOR DOHERTY questioned the use of public time, facilities, and equipment to further an election. His opponent had his picture taken with the governor in the governor's office. Would that be prohibited? If the governor wanted to endorse someone, he would have to do so off of public property. SENATOR BAER stated the amendments to this bill remove that situation. SENATOR DOHERTY questioned how this would affect the situation where the governor would be invited to speak to a club, clearly on government time, drives in a state car and during his speech voices his opinion about anything. SENATOR BAER stated there are specific exemptions for that type of performance by our governor. He is expected to represent himself and the people of Montana and this bill does not prohibit him from doing so.

SENATOR HALLIGAN was concerned about the enforcement policy. On page 2, line 15, reference is made to disciplinary action and a

civil penalty. He questioned who would handle the enforcement policy and what the disciplinary action would be. **SENATOR BAER** stated that he would consider merging this bill with SB 115 to form a consolidated ethics bill that will address this question. **SENATOR HALLIGAN** questioned what the internal rules of the legislature would be if he failed to disclose a conflict of interest. Could the Senate then suspend him for a day or two or is this something which would be handled by the Commissioner of Political Practices? **SENATOR BAER** stated there was a provision in this bill for the creation of a Senate Ethics Committee similar to the Ethics Committee in the House. SB 115 addresses a procedural process whereby disciplinary action is made available. **SENATOR HALLIGAN** stated there has been concern by industry that a lot of the employees making decisions in public agencies may be involved in environmental groups who directly oppose the decision on a permit. He questions whether this bill reached that far. **ROB NATELSON** stated he wasn't sure the bill reached that far.

SENATOR BAER pointed out that the section he is concerned with is existing law.

SENATOR GROSFIELD stated his understanding of Mr. Natelson's handout is that the concern is mostly with legislators who are public employees. He questioned whether it would be unethical for a person in agriculture to serve on the ag committee. Mr. Natelson stated that the first concern was with the policy of separation of powers. The belief that the legislative branch and the executive branch should be kept as distinct as possible. His personal opinion is that someone involved in a particular area of endeavor should not be sitting upon the committee that oversees that area of endeavor. A vote on a particularly agricultural matter to a farmer would have a disproportionate impact on that legislator. **SENATOR GROSFIELD** further asked about the situation which would be created wherein the MEA, being privately funded by teachers, ending up to be the only lobbying group allowed to participate in education issues in front of the legislature. Mr. Natelson stated the intent of the bill was overstated. The bill does not affect the constitutional rights of public employees or employers to organize or lobby the way private entities do. It states that that activity not be on the taxpayers money.

SENATOR DOHERTY asked about a private individual who contracts with the state. Mr. Natelson stated that this bill does not deal with that situation, however, SB 115 deals with the issue of contracting with the state.

SENATOR CRIPPEN questioned the conflict of farmers and ranchers serving on the Ag Committee. He stated that in this body they tried to take advantage of the abilities of the individuals who are in the legislature. They are then able to make informed judgements on the issues in front of that committee. Mr. Natelson stated that there are studies that committees ought to be rotated to prevent people whose interests are directly impacted by a particular committee from serving on the committee.

He suggested permitting a certain number of the regulated profession on the committee, but to limit it to a certain percentage. SENATOR CRIPPEN further questioned the scenario created when the legislature is over and he is invited to speak before a group, would he be in jeopardy as a legislator if he made a definite statement about a referendum? Mr. Natelson felt he would have the right to freely express his opinion. SENATOR CRIPPEN expressed concern that the supreme court would say that the legislature overstepped its bounds in this bill and has discriminated against a class of citizens. Mr. Natelson stated there is authority that holds that it is constitutional for a state to go even further and completely ban public employees from the legislatures. This bill does not affect the first amendment rights of public employees. Instead of dealing with free speech, this bill deals with taxpayer subsidized speech.

Closing by Sponsor:

SENATOR BAER stated this bill would not prohibit any public employee from lobbying on their own time and using their own resources. Independent contractors would not be effected in a business relationship with the state. Some states ban public employees from serving in the legislature. We are not doing that.

EXHIBIT 6, amendment requested by SENATOR BAER.

EXHIBIT 7, Montanans for Better Government handout.

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

DATE _____

1-25-95

SEN:1995
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Testimony in Support of Senate Bill 136

by

Robert G. Natelson¹

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 1/25/95

FILE NO. SB136

Mr. Chairman; Members of the Committee:

My name is Robert Natelson, and I am Chairman of Montanans for Better Government. I'm also Professor of Law at the University of Montana School of Law, where, among other tasks, I teach a course in the origins of the U.S. Constitution. I mention that last point because it is relevant to my testimony. I hasten to add, however, that my opinions are my own and I do not speak for the University or the law school.

Unfortunately, when I wrote this testimony, I had only the Introduction Copy of Senate Bill 136. Sen. Baer has told me that the draft may have been amended by the time I testify. With one exception, therefore, I am going to address only the general purposes of the bill rather than specific provisions.

Senate Bill 136 is directed at three problems: First, conflicts of interest among legislators who are employees of the state or subdivisions of the state; second, diversion of taxpayer resources to influence the outcome of elections, especially initiatives and referenda; and, third, taxpayer-financed lobbying.

All three of these problems actually are of like kind: Senate Bill 136 is designed to further the constitutional policy of separation of powers by reducing improper influence of the executive branch of government over the legislative branch.²

Let me explain. On the federal level, the *legislative* branch consists of Congress alone. Under our state constitution and supreme court decisions, however, the legislative branch includes the people as well as the house and senate. The people act as a separate, legislative body during the initiative and referendum process.³ Thus, lobbying lawmakers, serving in the legislature, and campaigning on ballot issues are all part of the Montana legislative process.

Similarly, on the federal level the *executive* branch is headed by the President alone; but Montana has a *fragmented* executive branch. In addition to the Governor and Lieutenant Governor, our executive branch includes the auditor, secretary of state, the public school and university systems, the attorney general, county attorneys, and other officers charged with

¹ Professor of Law, University of Montana; Chairman of Montanans for Better Government. The opinions expressed in this testimony are his and not necessarily those of any other person or institution.

² The separation of powers doctrine is stated in Mont. Const., Art. III, §1.

³ Mont. Const., Art. III, §§5, 6. See State ex rel. Esgar v. District Court, 56 Mont. 464, 185 P. 157 (1919); State ex rel. Hay v. Alderson, 49 Mont. 387, 142 P. 210 (1914).

carrying out the law.⁴ Thus, employees of any of those entities are members of the executive branch; and when they sit in the legislature or lobby or campaign on ballot issues they are executive branch officers involved in the legislative process.

As former British subjects, the framers of the U.S. Constitution were familiar with a system in which the executive branch exercised undue influence over the legislative. They wrote that this influence impaired the role of lawmakers as representatives of the people and as exercisers of independent judgment. The framers used strong words to describe that situation, calling it "betrayal," "corruption" and "seduction."⁵

The framers' cure was an absolute rule against federal employees serving in Congress. This rule does not come from the Hatch Act; it is in the U.S. Constitution,⁶ and was inserted when Congress was still a citizen legislature. Defenders of the status quo in Montana sometimes argue that a citizen legislature makes conflict of interest standards less desirable; but our country's founders recognized that because a citizen legislature has many potential conflicts, clear ethical rules are *more necessary*, not less, than in a professional legislature.

Unlike the federal constitution and several other states,⁷ Montana does not bar public employees from the legislature. But our Constitution does require that the legislature adopt a Code of Ethics prohibiting conflict of interest.⁸ Because the legislature has fulfilled this duty only imperfectly, in recent years we have witnessed the consequences: Lawmakers who are university professors voting for university appropriations; lawmakers employed by the public

⁴ Mont. Const. Art. VI, §1 lists only the governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor as being in the executive branch. However, county attorneys enforce the law and are subject to the supervision of the attorney general, Mont. Code Ann. §2-15-501(4), and to a lesser extent, of the governor. §2-15-201(6). The Montana University System executes the laws of the state, and as such clearly is part of the executive branch. See State ex rel. Spire v. Conway, 472 N.W.2d 403 (Neb. 1991) (under Nebraska constitutional provision prohibiting members of one branch of government from exercising powers of coordinate branch, state senator could not also serve as assistant professor at state college; professor is member of executive branch).

⁵ FEDERALIST PAPERS No. 55 (Madison); No. 76 (Hamilton)

⁶ Art. I, §6.

⁷ E.g. Mich. Const., Art. IV, §8:

No person holding any office, employment or position under the United States or this state or a political subdivision thereof, except notaries public and members of the armed forces reserve, may be a member of either house of the legislature.

Similar rules exist in several other states. A non-exhaustive list includes Connecticut, Georgia, Nebraska, and Virginia. Conn. Const., Art 3, §11; Ga. Code §16-10-9; State ex rel. Spire v. Conway, 472 N.W.2d 403 (Neb. 1991); Va. Const., Art. IV, §4; and are fully valid under the U.S. Constitution. Stolberg v. Caldwell, 175 Conn. 586, 402 A.2d 763, app. dis'd 454 U.S. 958 (1978).

⁸ Mont. Const., Art. XIII, §4.

school system voting against a bill to open up their quasi-monopoly to competition;⁹ the superintendent of public instruction using taxpayer funds to threaten state contractors with dire consequences if they sign a referendum petition;¹⁰ extensive lobbying by public employees on the taxpayer's nickel;¹¹ and repeated use of taxpayer funds to influence votes on school mill levy and bond referenda. In fact, despite recurrent complaints, this last practice threatens to continue this year, as demonstrated by a leaflet now being prepared by Missoula Elementary School District #1, and attached to my testimony for your examination.

Senate Bill 136 is a serious attempt to deal with the problem of executive branch interference in the legislature. This is in marked contrast to the secretary of state's ethics bill, S.B. 115, that does not deal as effectively with that problem. For example, Section G(2) of S.B. 115 specifically permits a lawmaker to vote on a measure that will disproportionately benefit him if it results in similar disproportionate benefit to other members of his own profession. This, I submit, is an open invitation to ethical abuse.

To protect academic freedom, I do favor some amendment of Senate Bill 136, specifically §2-2-121(2)(g) (p.4, lines 25-26). The current language is broad enough to forbid honest scholarship that might have policy consequences. We can cure the problem by changing "to promote a political ideology that could potentially affect the outcome of an election" to "for the purpose of affecting the outcome of a specific election." We might narrow subparagraph (h) for the same reason.

Finally, I note that although I am a public employee myself, this testimony was prepared on my own time and at my own expense.

Thank you very much for your attention.

⁹ Thus, House Bill 81, voted on in the 1993 special session, would have encouraged competition among public and private schools through a refundable tax credit mechanism. All ten public schoolteacher-legislators voted against it.

¹⁰ During the 1993 petition drive that led to Initiative Referendum 112, OPI prepared and mailed a leaflet threatening school bus contractors with loss of work if the petition were successful.

¹¹ The Commissioner of Political Practices lobbying reports disclose substantial numbers of lobbyists paid either directly by the taxpayers (as through state agencies, the university system, or local governments) or indirectly (as through the Montana League of Cities and Towns).

Election: Tuesday, April 4, 1995

Building Reserve Funds for School Safety and Maintenance

Missoula Elementary School District #1

WHY? Wear and aging have taken a toll on our school buildings. Missoula County Public Schools is committed to keeping its buildings safe and well maintained. Over the years, Missoula voters have supported that commitment and voted on short-term funds to pay for safety and major maintenance. Our school buildings continue to need major work although the elementary school funds have expired and the high school fund will expire June 30. If approved, the high school building fund would renew and expand the one expiring.

WHEN? On April 4, two Building Reserve Funds will be on the ballot. Although the two school districts unified this school year, state law requires that their budgets remain separate. Therefore, there will be two ballots: one for the high schools and one for the elementary and middle schools.

WHAT? The safety and maintenance work that needs to be done includes:
Elementary and Middle Schools

- *sewer hookups* at Franklin, Russell, Lewis and Clark
- *roof replacement* at Washington, Meadow Hill, Franklin, Roosevelt, Cold Springs, Hawthorne, Porter and Lewis and Clark
- *heating system repair* at Roosevelt, Washington, Jefferson, Lowell, Lewis and Clark, Prescott, Franklin, Hawthorne, Porter
- *playground safety improvement* at Porter, Dickinson, Franklin, Hawthorne, Lowell, Lewis and Clark, Mount Jumbo, Prescott, Roosevelt, Russell and Paxson
- *communication conduits* at Hawthorne, Roosevelt, Mount Jumbo, Lewis and Clark, Dickinson, Washington, Rattlesnake, Meadow Hill, Porter, Russell, Prescott, Lowell, Franklin
- *disability access* at Lewis and Clark, Prescott, Roosevelt, Lowell, Administration Building
- *electrical upgrades* at Franklin and Administration Building.

**Elementary and
Middle Schools**

BALLOT

These projects require immediate attention. The school district believes -- as the owner of a home does -- that maintenance is an investment that saves money in the long run.

HOW MUCH? The Building Reserve Funds would be levied for five years for \$ each year for the elementary and middle schools. Cost to the taxpayer on a 100,000 home would be \$ a year for the elementary and middle school fund.

WHICH BALLOTS WILL I USE? If you live within the boundaries of the elementary District # 1, you will vote on both the elementary and high schools building reserve funds.

TENTATIVE PLAN.

Election: Tuesday, April 4, 1995

EXHIBIT 3
DATE 1-25-95
SB 136

Building Reserve Funds for School Safety and Maintenance

Missoula County High School District #1

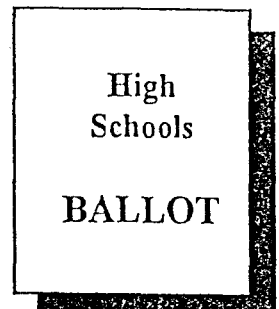
WHY? Wear and aging have taken a toll on our school buildings. Missoula County Public Schools is committed to keeping its buildings safe and well maintained. Over the years, Missoula voters have supported that commitment and voted on short-term funds to pay for safety and major maintenance. Our school buildings continue to need major work although the elementary school funds have expired and the high school fund will expire June 30. If approved, the high school building fund would renew and expand the one expiring.

WHEN? On April 4, two Building Reserve Funds will be on the ballot. Although the two school districts unified this school year, state law requires that their budgets remain separate. Therefore, there will be two ballots: one for the high schools and one for the elementary and middle schools.

WHAT? The safety and maintenance work that needs to be done includes:

High Schools

- *fire and safety systems* at Hellgate
- *roof replacement and repair* at Big Sky, Hellgate and Seeley Swan
- *tile and carpet replacement* at Big Sky and Sentinel
- *heating systems repair* at Big Sky, Hellgate and Sentinel
- *bleacher replacement* at Hellgate and Sentinel
- *disability access* at Big Sky, Seeley Swan, Sentinel and Willard
- *window replacement* at Sentinel
- *door replacement* at Hellgate and Sentinel
- *security system installation* at Big Sky
- *lighting replacement* at Hellgate and Willard (Adult Education)
- *track resurfacing* at Sentinel and *expanded parking* at Willard
- *locker replacement* at Seeley Swan and Sentinel
- *asbestos and other environmental management* at Hellgate, Big Sky and Seeley-Swan



These projects require immediate attention. The school district believes -- as the owner of a home does -- that maintenance is an investment that saves money in the long run.

HOW MUCH? The Building Reserve Funds would be levied for five years for \$, each year for the high schools. Cost to the taxpayer on a \$100,000 home would be \$ a year for the high school fund.

WHICH BALLOTS WILL I USE? If you live outside the boundaries of Elementary School District #1, you will vote (and be taxed) on only the high school building reserve fund.

REVERSE

SB136
SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 1/25/95
BILL NO. SB136

TESTIMONY SUBMITTED TO THE SENATE JUDICIARY COMMITTEE

ON SB136

Submitted by Wes Higgins, Kalispell
Member: Montanans for Better Government
United We Stand Montana
Date: January 25, 1995

AS YOU KNOW, THE PUBLIC TRUST OF ELECTED OFFICIALS AND PUBLIC EMPLOYEES HAS REACHED AN ALL TIME LOW. OUR GOVERNMENT, THAT IS SUPPOSED TO SERVE THE PEOPLE IS BECOMING ONE THAT INSTEAD, (IF I MAY USE THE RANCHERS' TERMINOLOGY) SEEMS TO WANT TO SERVICE THE PEOPLE.

THE FREQUENCY OF THE VIOLATIONS AND ABUSES OF THE PUBLIC TRUST SEEMS TO HAVE ESCALATED IN THE PAST FEW YEARS, FROM SCHOOLS AND LOCAL GOVERNMENT RIGHT ON UP TO THE STATE HOUSE, AND HAS RESULTED IN A "THEM VERSUS US" MENTALITY.

AS THE AUTHOR AND CHAIRMAN OF CI-66, I SAW EXAMPLES EVERY DAY, IN THE HEAT OF THE CAMPAIGN, OF ELECTED OFFICIALS AND PUBLIC EMPLOYEES USING TAX MONEY, GOVERNMENT RESOURCES, AND EMPLOYEE TIME TO INFLUENCE THE ELECTION.

ADMITTEDLY, THE PERCENTAGE OF ELECTED OFFICIALS AND PUBLIC EMPLOYEES THAT VIOLATE THE PUBLIC TRUST IS SMALL, BUT THOSE FEW INCRIMINATE THE REST BY ASSOCIATION. THE RULES OF CONDUCT AND ETHICS REQUIREMENTS EMBODIED IN SENATE BILL 136 WILL SERVE TO IMPOSE DISCIPLINE ON THOSE WHO NEED IT AND PROTECT THE CREDIBILITY AND INTEGRITY OF THE PUBLIC SECTOR AS A WHOLE.

PAUL HARVEY STATES "THAT SELF-GOVERNMENT WITHOUT SELF-DISCIPLINE WILL NOT WORK". THE NEED HAS ARRIVED FOR THE LEGISLATURE TO ACT AND IMPOSE SELF-DISCIPLINE UPON YOUR BODY AND THE ENTIRE PUBLIC SECTOR BY PASSING SENATE BILL 136. PASSAGE OF THIS BILL CAN BE A MAJOR FIRST STEP IN RESTORING THE PUBLIC TRUST, AND OUR GOVERNMENT, THAT IS SUPPOSED TO SERVE THE PEOPLE, INSTEAD OF THE BUREAUCRACY!

I URGE YOUR SUPPORT OF THIS VERY IMPORTANT BILL.

THANK YOU,

WES C. HIGGINS

Don Waldron
Montana Rural
Ed Asson.

SB136

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 1/25/95

FILE NO. SB136

PROPOSED AMENDMENT TO SB136

Page 4, Line 18

DELETE, after word election
", or" INSERT "."

Page 4, Line 19

DELETE "(h)", INSERT "(3) A
PUBLIC OFFICER, A LEGISLATOR
OR A STATE EMPLOYEE MAY NOT

Renumber Remaining Subsections

With Amendment, it would read:

* * * * *

could potentially affect the outcome of an
election.

(3) A PUBLIC OFFICER, A LEGISLATOR OR A
STATE EMPLOYEE MAY NOT use public resources
to pay, supplement, or subsidize in any way
a lobbyist, the media, or any other method
of influence intended to persuade or affect
a political decision.

* * * * *

Amendments to Senate Bill No. 136
First Reading Copy

Requested by Senator Baer
For the Committee on Judiciary

Prepared by Greg Petesch
January 24, 1995

1. Title, lines 9 and 10.
Following: "SUPPLIES," on line 9
Insert: "PERSONNEL,"
Following: "FUNDS" on line 9
Strike: remainder of line 9 through "ISSUE" on line 10
Insert: "FOR ANY POLITICAL OR CAMPAIGN ACTIVITY PERSUADING OR
AFFECTING A POLITICAL DECISION UNLESS THE USE IS AUTHORIZED
BY LAW OR PROPERLY INCIDENTAL TO ANOTHER ACTIVITY REQUIRED
OR AUTHORIZED BY LAW"
2. Page 2, line 9.
Strike: "the public employee is compensated as a legislator"
Insert: "that the legislature is in regular or special session"
3. Page 2, line 13.
Strike: "mandatory"
4. Page 2, line 20.
Following: "within"
Strike: "the"
Insert: "12"
5. Page 3, line 3.
Strike: "mandatory"
6. Page 3, line 6.
Following: "."
Insert: "The prevailing party may recover attorney fees and court
costs from the nonprevailing party."
7. Page 3, line 9.
Strike: "or collaterally"
8. Page 3, line 11.
Strike: "disclose and"
Following: "or"
Insert: "disclose the interest and"
9. Page 3, line 12.
Following: "action"
Insert: ", as provided in the joint rules of the legislature"
10. Page 3, line 20.

(OVER)

Following: "affecting"
Insert: "or legislative duties"
Strike: "does"
Insert: "do"

11. Page 3, lines 21 and 22.
Strike: "entire" on line 21
Following: "person" on line 21
Strike: remainder of line 21 through "with" on line 22
Insert: "related to"

12. Page 3, line 23.
Strike: "in any way"

13. Page 3, line 27.
Following: line 26
Insert: "(5) A legislator concerned with the possibility of a conflict should briefly present the facts to the committee of that house that is assigned the determination of ethical issues. The committee shall determine whether the legislator should participate in action involving the issue."

14. Page 4, line 3.
Following: "facilities,"
Insert: "supplies, funds,"

15. Page 4, lines 17 and 18.
Following: "supplies," on line 17
Insert: "personnel,"
Following: "funds" on line 17
Strike: remainder of line 17 through "election" on line 18
Insert: "for any political or campaign activity persuading or affecting a political decision unless the use is:
(i) authorized by law; or
(ii) properly incidental to another activity required or authorized by law, such as the function of the governor, legislators, or their staffs in the normal course of their duties"

16. Page 4, lines 26 and 27.
Strike: subsection (5) in its entirety
Renumber: subsequent subsection

MONTANANS FOR BETTER GOVERNMENT

FACT BULLETIN #6*

JAN 25 1995
JAN 25 1995**Public Sector Conflicts of Interest: Montana's Real Ethical Problem**

SB136

Q. What are the critical ethics issues in Montana government today?

A. Although previous ethical controversies have involved business influence in government, that is less of an issue in Montana today than "public sector conflicts of interest" — abusing the public trust to serve *personal interests in government*.

Q. Please explain.

A. Here are Montana's most serious ethics problems:

- (1) Lawmakers employed by or retired from state or local government, and thereby receiving regular checks, but voting on appropriations and policy questions affecting themselves and their agencies,
- (2) Lobbyists paid from public funds, and
- (3) Improper government interference with the election process.

Q. How extensive is the first problem (legislative conflict of interest)?

A. Very extensive. In recent years, the largest special interest in the legislature has not been agriculture or ranching as commonly believed, but *government itself*. About 1/3 of all 1993-95 lawmakers came from households supported with pay or pension checks from the state or subdivisions of the state. At least nine members lived in households where both the member and spouse received state checks.

Q. So what?

A. Lawmakers receiving government checks flock to the committees that oversee their own agencies. As committee members and on the floor, they can control funding and policy for those agencies, both to extract benefits for themselves and to block reforms that are in the public interest. Ethically, these legislators should disqualify themselves from voting, but they almost never do.

Q. Doesn't almost every lawmaker have some sort of conflict of interest?

A. Yes — in a citizen legislature almost everyone has some conflicts. For this reason, lawmakers need clear guidance on how recognize conflicts and how to respond to them.

Q. Where is that guidance supposed to come from?

A. The Montana Constitution (Art. XIII, §4) directs the legislature to "provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature...." But the legislature has *disregarded* this mandate. Its code is much weaker for lawmakers than for other officials. It does not prohibit — nor even require disclosure of — most conflicts. Instead, it provides only that a lawmaker faced with a conflict "should consider" disclosing, abstaining, or eliminating the interest [Mont. Code Ann. §2-2-112(2)].

Q. What can Montanans do about legislative conflict of interest?

A. Montanans should insist on a code of ethics including, at a minimum, mandatory disclosure, disqualification from certain committees, and no-voting rules. Some argue against receiving agency checks while in session (although this would not cure the long-term conflict), limiting a conflicted member's role in

- over -

debate, or banning public employees from the legislature. The last rule prevails in the federal government and at least eight states.

Q. On the second problem: How much government lobbying do taxpayers pay for?

A. *Over 40% of registered lobbyists — those who "lobby for hire" — are financed, directly or indirectly, by tax dollars.* For instance, the Montana University System pays a full-time lobbyist to increase the flow of tax dollars it receives. The same is true of many local governments, state agencies, and associations supported by dues from government agencies.

Q. How do we deal with this issue?

A. We need a level playing field. Individual citizens who lobby do so at their own expense. Private interests and citizens' groups who hire lobbyists do so from their personal funds or from voluntary contributions. It is reasonable to insist that pro-government people seeking higher taxes or more power also should rely on voluntary contributions to support their lobbying efforts. Of course, government employees providing *purely informational* testimony as part of their jobs should be paid out of the public treasury. They are not "lobbying" as the term is defined in Montana law [Mont. Code Ann. §5-7-102].

Q. Now the third problem: How are public servants improperly interfering with elections?

A. Public employees and policy makers regularly dip into public resources to finance campaigns to influence the initiative and referendum process. Thus, in 1993, the Office of Public Instruction used taxpayer money and public employee time to campaign against a citizen petition drive. In 1993-94, the Board of Regents permitted diversion of public funds into a lawsuit designed to cancel an election. In 1994, the Regents diverted property and employee time to its campaign against CI-66 and CI-67. And year after year, local school officials use tax money and employee time to influence mill levy elections.

Q. How do the malefactors justify their conduct?

A. Not very persuasively. Their usual argument is that they are "just providing information." Almost invariably, however, this "information" is biased toward their particular point of view and may be incomplete, misleading, or incorrect. The tip-off is that they *never* give their opponents a genuine opportunity to help prepare this "information."

Q. Isn't this really a form of electoral corruption?

A. Yes. And there are other examples. In 1994, for instance, teachers and students were intimidated during mill levy elections. And school officials spent substantial sums without complying with the disclosure or registration requirements of state law.

Q. Isn't this corruption illegal already?

A. Much of it is. But the law forbidding public employees from campaigning on the job is vague and weak enough to discourage prosecution. The law needs to be clarified and strengthened, and some activities should be felonies rather than misdemeanors.

Q. Are there some "ethics proposals" we should be cautious of?

A. Yes. Politicians frequently use a device called "preemption" — promoting weak proposals to forestall serious reform. Several recent proposals come down hard on private sector interests, but avoid tackling the more serious question of public sector conflicts of interest. So before you sign onto any proposal, make sure it deals with the problems set forth above.

DATE 1-25-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SB 136 - SB 192

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
WALTER J. KERO	MONTANANS For Better Govt	SB 136	✓	
Michael Gonsior	"	SB 136		
Kamala Webb		SB 136		
Wes Higgins	Montanans For Better Govt	SB 136	✓	
JIM BLANKENSHIP	" " "	SB 136	✓	
Leo Giacometto	Governors Office	SB 136 SB 192	✓	
Jim Hubble	Judith Basin COUNTY ATTORNEY	SB 192	✓	
Bill Olson	AARP	SB 136	✓	
BOB BALLYEAT	Montanans for Better Govt	SB 136	✓	
Tom Connor	INBG	"	✓	
ROB WATKINSON	MBG	SB 136	✓	
RAYMOND BABB	SELF	SB 136	✓	
William Marks	State Appellate Dele.	SB 192	✓	
MAHLE	Self	SB 136		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1/25/95
SENATE COMMITTEE ON Judiciary
BILLS BEING HEARD TODAY: SB 136 / SB 192

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Deborah Smith	Common Cause	136		
Geary C. Co. A. J.	Novelli Co. Attorney	192		
Laurie Kostrik	Christian Coalition Mt	136	✓	
Arlette Gladish	ESGee Forum	136	✓	
John Rice	Montana For Better Government	136	✓	
Ken Tromp	Montana For Better Government	136	✓	
Bristine Tromp	For Better Montana	136	✓	
Mike Cooney	Secretary of State	136	✓	
Fred Happel	Mont. For Better Govt.	136	✓	
Chris Imhoff	Montana League of Women Voters	SB 136	✓	with
Amy Pfeifer	Self	SB 136		✓
Russ Ritter	Mont Rosencus	136	✓	
Beth Baker	Dept of Justice	136	✓	amend.

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETAR

DATE 1/25/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: 0 SB 131 / SB 192

PLEASE PRINT

Check One

[illegible]

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETAR

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE CRIPPEN, on March 27, 1995, at
8:00 AM

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: Sen. Lorents Grosfield (R)

Members Absent: None

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 136
Executive Action:

HEARING ON SB 136

Opening Statement by Sponsor:

SENATOR LARRY BAER, Senate District 38, Bigfork, presented SB 136. Article XIII, Section 4, of the State Constitution states, "The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees." It says shall, not may. It says prohibiting, not compromising. It expressly prohibits conflict between public duty and private interest. The product of this bill reflects that intent while keeping well in mind the nature of our citizen legislature and our desire to avoid discouraging people from any walk of life

from seeking legislative office. Perception of the public, as to the integrity and the honesty of their representatives and employees, is important to us. By creation of this bill, we express our dedication to the satisfaction of our constituents. This bill is the proud result of many bipartisan legislators from both Houses who sacrificed many hours seeking a quality product. It is well conceived and carefully derived. It is born from the sense of objectivity and fairness of dedicated legislators who truly care about public responsibility, perception and confidence. Therefore, in addition to conduct of legislatures they have carefully addressed the improper use of public resources for private or political use and have provided for enforcement through sensible civil and criminal sanctions. However, a chilling effect upon public employees has been carefully avoided by conscientious application of these rules in a practical and equitable manner that protects the public. By way of this bill, the legislature is certifying their willingness to hear and address the public concerns on ethical conduct by elected and publicly employed or appointed persons. This bill is a reasonable alternative to far more drastic measures taken by some other states and the federal government under the Hatch Act. In future legislative sessions, this bill may be further amended, polished and refined as we deem necessary to enhance and ensure the faith of Montanans in our dignity, honesty and integrity.

Proponents' Testimony:

SENATOR DOROTHY ECK, Senate District 15, Bozeman, stated that when she appeared before the committee earlier she felt that this bill would require a lot of work and review. The committee has come up with legislation which is understandable and has workable enforcement. It could be strengthened in some places; however, the document as is can go forward.

REPRESENTATIVE ROSE FORBES, House District 42, Great Falls, commented that she served on the Select Committee on Ethics. A lot of hard work went into putting together this compromise piece of legislation.

Debbie Smith, Common Cause, stated their support of the ethics bill. There are parts of the bill she would like the committee to reexamine. The parts of the bill that she believes represent model legislation would be the provision for proving model rules for legislators, public officers and employees so that people know beforehand what is or isn't ethical. There are also very fine provisions for enforcement of violations of those rules against public officers and employees. The other disclosure provisions should ideally be more flushed out. The provisions of HB 410 have been worked into this bill. HB 410 was a bill which required disclosure of membership interests in organizations by public employees when those employees were involved in proceeding in their professional capacity and in which an organization of which they are a member is also involved. The ethics bill as that in a situation where a public employee is

a member of an organization and that organization becomes involved in a contested case proceeding, the employee would have to disclose to his or her supervisor that he or she is a member of that organization. If any interested person asks the supervisor, the supervisor must disclose the membership. This is a blatant violation of people's right to privacy under the First Amendment and the comparable provision of the Montana Constitution. The reason is that in order for the state to limit someone's ability of free speech, freedom of association, or right of privacy there needs to be a compelling state interest and the regulation needs to be so narrowly drawn as to affect only that interest. In this case the state has a very valid reason for insuring that adjudications before state agencies are fairly adjudicated. This statute is not narrowly defined to insuring fairness. This broadly requires disclosure of membership in organizations that may take a position contrary to the permit applicant. This does not advance the state's interest. This language is found on pages 8, line 25 through page 9, line 2. The Select Committee amended several parts of the subcommittee bill which they would like to see placed back in the bill. This would be the definition of substantial value concerning gifts. They would also request that the subcommittee provisions on detailed disclosure of specific financial interests over a certain dollar or percentage amount be placed back in the bill. They would like to see the revolving door prohibition, the prohibition on lobbying in the next regular session of the legislature by a legislator currently serving, also be placed back in the bill. While there is a very good mechanism set up in the bill for ethics committees in the legislature, she asked that the committee consider whether those committees be given enforcement powers similar to the powers which the Commissioner of Political Practices has to enforce the act against public officers and employees. Public officers and employees are subject to enforcement penalties but legislators are not. This bill represents a good step in the right direction.

Don Waldron, Montana Rural Education Association, stated he attended several of the Select Committee meetings. There were some things which were compromised and he congratulated the people who worked on the bill. He asked for one change on page 5, line 11, that would strike the word "cost" and insert the word "salary".

J. V. Bennett, Montana Public Interest Research Group, stated they share the same concerns as Common Cause in incorporating the language from HB 410. They believe it is unconstitutional and creates a situation which may discourage people from being involved in public service. A professional should be able to put aside his or her own beliefs. Simply because they are a member in some organization does not mean that they are going to compromise their professional discretion, nor does it mean that they pull the party line which that organization believes. They would also like to see a dollar amount put on substantial value for gifts. They also feel the disclosure requirements should be

fleshed out a little more. It would be unclear under the present bill whether the income for different sources was significant. They also feel that enforcement for legislators is important. To the public it would seem fair that legislators have the same kind of enforcement as public officials and employees have.

Ed Argenbright, Commissioner of Political Practices, commented that he sat through hours of meetings with both the subcommittee and the select committee. He stated he presides over the smallest agency in state government. He and two other people handle the campaign finance disclosure, register lobbyists, oversee political practices, accept complaints during campaigns and file disclosure for elected officials. Under Initiative 118, they will be dealing with additional restrictions on campaign finance disclosure, contributions and expenditures and their duties will be significantly increased. With the responsibilities that are a part of this bill, he implored the committee to provide the resources necessary to carry through on ethics legislation. This bill addresses between 11,000 to 15,000 people. They are in the process of developing the fiscal note. The hotline for the Legislative Auditor has had hundreds of calls. There will probably be five complaints per month. Two may go to a hearing which will require the legal resources to conduct the hearing. The additional staff and the resources necessary to do a good job is a critical factor. At one point he believed that having his enforcement decisions reviewed by an ethics commission would be a good idea. He has consulted with his attorneys. His past experience included holding numerous hearings and he was the final authority there. He believes that leaving the final authority in his office would be cost effective and also that the appointment of the commissioners to the ethics commission has a problem associated with the separation of powers. The procedure in the bill for appointing those commissioners is a procedure which is based on the procedure for legislative reapportionment. Members are appointed by the leadership of the legislature. This would get into having that process appoint commissioners for an ethics commission which would be an executive branch activity. They probably should be a gubernatorial appointment. He would also like to have rulemaking authority. His current rulemaking authority deals with the submission of complaints in the area of political practices. Often times those complaints are of a frivolous nature and he has a procedure whereby they can be dismissed. Under this legislation, he is not sure how that would work. He also requested legislative guidance on when the personal information should become available in a complaint. When a complaint is filed with his office dealing with an ethics issue, at what point does the information become public? He would liken that to a complaint before a licensure board. Often times those complaints are made, but are never made public because of the great potential for personal damage.

Eric Feaver, Montana Education Association, spoke in support of SB 136. He believes this bill will be amended through the years.

On page 5, lines 10 through 12, the word "cost" is very vague. On page 12, Section 12, since members of quasi-judicial boards and commissions will be disclosing, he questioned whether they should be disclosing every economic interest they, their spouse or minor child may have. These boards would be boards such as The Teachers Retirement System, The Board of Public Education, The Board of Personnel Appeals, etc., and this will have a chilling effect upon people who would be willing to serve on those boards. People who have expertise are likely to have some economic interests which they may not choose to share with the universe. This is a matter of privacy. To be as pure as the driven snow is not something we are ever going to find in a Montanan. Also, in Section 18, Ethics Commission, he questioned whether there could be an Ethics Commission which could look like the one suggested. The exclusion of members seems to be more broad than it really needs to be. Section 20 is also overbroad. He does not know how we could have a commission which would be so above the realm of politics. Perhaps people who are involved in the realm of politics in which these issues are boiling ought to be on the commission. Section 22 states that all local governments could appoint panels to assist them in the review of complaints against those local governments. Each panel would be its own entity. There could be multiple conclusions coming out of the same community over very similar issues or disputes.

Garth Jacobson, Secretary of State's Office, stated he served on the Ethics Advisory Commission which prepared SB 115. He spoke in support of SB 136. It hasn't been since 1977 that anything has happened in this area. It took 18 months of work by the Ethics Advisory Council, 30 to 40 hours of work by the Subcommittee, and several sessions by the Select Committee to come up with this legislation. We are on the verge of having some meaningful ethics laws in Montana.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

SENATOR STEVE DOHERTY, referring to the definition of private interest, stated he could not find any intimation of any interest which an individual may have in regard to a public contract with the state. This would include all of public works, grazing leases, etc.

SENATOR BAER stated under the definition of public employee, (c) would include a person under contract with the state.

SENATOR DOHERTY asked if a person who owned an interest in a subchapter S corporation or a small family corporation would have to disclose?

SENATOR BAER stated that under current law if a person had a major business interest or ownership in a corporation, he or she would be required to disclose that under the current form. This bill only requires to disclose that there is an interest. It does not ask for an amount.

SENATOR DOHERTY, referring to pages 8 and 9 which dealt with memberships to organizations, asked Ms. Smith what her proposed amendment to that section would be?

Ms. Smith stated she would recommend striking (4). She believed (5) should stand. Subsection 5 prohibits state officers or state employees, while they are acting in their capacity, from lobbying on behalf of the organization in which they are a member. The disclosure may subject some employees and officers to harassment while doing nothing to ensure the integrity of the process which the state is trying to protect.

SENATOR DOHERTY asked why a member of a non-profit organization should be required to disclose?

Ms. Smith stated she did not see a problem with that type of disclosure because the public is entitled to know what that individual stands for. That is useful information for the electorate. She would object to disclosure of organizational memberships where the person is not a board member.

SENATOR MIKE HALLIGAN stated that if he was a board member of a non-profit group which made a decision to take an action against the state, would that potentially create a conflict which would require disclosure to a supervisor?

Ms. Smith answered that page 9, (5) includes that a state officer or employee is prohibited in engaging in activities on behalf of an organization while performing the officer's or employee's duties.

SENATOR HALLIGAN asked Mr. Feaver what area he was referring to in his testimony?

Mr. Feaver answered he was referring to the entire section. In particular, on line 11 the reference to "member of a quasi-judicial board or commission . . . shall file with the commissioner . . ." Also, line 25 refers to a member of the individual's immediate family.

SENATOR DOROTHY ECK commented that the model bill from which SB 115 was drafted had almost any appointed person to all the advisory boards requiring disclosure. This was changed to quasi-judicial because those boards make important decisions. There have been arguments back and forth about spouses. The decision was made to include spouses. She has discussed this with people who work with ethics and feel that it is important to have the

spouse included. This is especially important for candidates. She feels that a simple disclosure form can be created.

Mr. Jacobson stated that SB 115 had a significant amount of disclosure required. The subcommittee tried to parallel existing law in regard to the disclosure statements required by the Commissioner of Political Practices. The people who would have to disclose, would be those people who were in key decision making positions, which may be subject to influence. This would include the high level policy makers on boards, the elected officials, and the high level officials in state government.

SENATOR LINDA NELSON stated that Section 20 referred to members only during their term of office. A person would have to put their political activity on hold for four years. She asked Mr. Argenbright if he is restricted from donating to candidates, etc.?

Mr. Argenbright stated that he was not aware of any restrictions in the law. He stated he does not contribute or attend political functions. He is prohibited from seeking elective office for a five year period after leaving his current position.

SENATOR REINY JABS asked what conflict a commission member may have by making a contribution to a candidate?

SENATOR BAER stated the purpose of the new section would be to create a commission which would oversee any complaints or any violations which are alleged. In order to do that with the proper discretion, any appearance of impropriety by a commission member must be avoided. They must divest themselves of any interest in any person who might come before the committee in order to come to an objective decision.

SENATOR JABS stated he is a rancher who leases land from the Crow Indian Reservation. They recently put a minimum on the price of the land. He was asked to write a letter protesting the higher rates. If he wrote a letter with his letterhead as a Senator and signed as a Senator would he be violating anything?

SENATOR BAER stated he was not sure about the interaction between MCA and Tribal law. He stated that unless he was in a position of authority regarding the ethics commission or something else involved in this bill, he would only be exercising his constitutional right to expression.

CHAIRMAN BRUCE CRIPPEN stated that if he was representing constituents, that would be okay.

SENATOR RIC HOLDEN asked SENATOR BAER to clarify line 24 on page 6.

SENATOR BAER stated it was his understanding that that particular language was in reference to a Senator's obligation to vote in the Senate.

SENATOR HOLDEN stated he did not read it as pertaining to voting while in the Senate. Line 24 reads "A legislator has a responsibility to the legislator's constituents to participate in all matters affecting the constituents."

SENATOR BAER stated this language makes reference only to specific duties and requirements of legislators.

SENATOR HALLIGAN asked if the committee looked at additional funding?

SENATOR BAER stated he was not a member of the Select Committee. He was present at the meetings and felt they were being very prudent as to what type of a mechanism would be set up. A fiscal note should be forthcoming.

Closing by Sponsor:

SENATOR BAER commented that the bill is a very well drafted bipartisan effort by both parties and both Houses of the legislature. This bill is a beginning to real assertion of ethical conduct in Montana. He believed the public would appreciate the efforts.

DATE _____

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DATE 3/27/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 136

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Check One

Name	Representing	Bill No.	Support	Oppose
J.V. Bennett	MontPIRG	136	X	
Dow Waldron	Mont. Rural Econ. Assn.	136	X	
Ed Augenbright	MREA	136		
	Can. Pol. Practices	136		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Mr. Kiser stated one of the problems would be in the supervision and training necessary for the personnel. The site in Laurel is probably supervised by a dispatcher who has had no training for supervising youth in incarceration.

REPRESENTATIVE MOLNAR stated the training requirement is 16 hours. This is not very much.

SENATOR BAER stated in Flathead County the jails are crammed, they do not know how to deal with the influx of people in their jails. Would they be required to accept the youths?

REPRESENTATIVE MOLNAR answered this would be discretionary. They would have a choice on whether or not to apply for the licensing necessary.

SENATOR HALLIGAN commented he had a problem with the phrase "not to exceed 10 days" being placed into the statute because the wording came out of nowhere. They are trying to deal with federal rules and other requirements they have been working with for some time.

Motion/Vote: SENATOR HOLDEN MOVED THE LAST AMENDMENT DO PASS. The motion FAILED on oral vote.

SENATOR BAER stated that in recent years they had a halfway house for youth who attended the Bigfork school system and caused immeasurable grief to the student body and staff by their sometimes criminal actions. He believed schools should have the discretion to avoid that type of situation and also to have the duty to protect the good children from the bad children.

Vote: SENATOR BAER voted "YES" on the amendment on page 13.

EXECUTIVE ACTION ON SB 136

Discussion: SENATOR HOLDEN stated he had three sets of amendments he wished to present separately, EXHIBIT 4. The first amendment was on page 6, line 25. He suggested striking the words "affecting the constituents" and inserting "required in legislative rules". This would pinpoint the language to the legislative rules.

SENATOR BAER commented that the intent for the language was to require legislators to vote on matters even though that might represent an apparent conflict which had been properly disclosed by that legislator to the appropriate person. He agreed the language was somewhat vague.

SENATOR DOHERTY commented that it was a good amendment. If constituents had a meeting and wanted their legislator there, this would say that a legislator had a responsibility to his or her constituents to participate in all matters respecting the constituents. This language could give them a cause of action

against their legislator for violating the public trust which they hold. This amendments narrows the language down to voting.

SENATOR HALLIGAN asked if this language only covered the time frame during the session or if it also reached to matters after the session.

Ms. Lane stated if might clarify matters to insert the word "legislative" after the word "all".

CHAIRMAN CRIPPEN referred to a meeting of all Yellowstone County Legislators called by REPRESENTATIVE BOLLINGER during the session, would every legislator be required to attend?

SENATOR BISHOP stated this was to apply only during a legislative session.

SENATOR HOLDEN stated if this language stated "legislative rules" there would be a book to refer to which explained exact rules.

Motion/Vote: SENATOR HOLDEN MOVED TO AMEND SB 136. The motion CARRIED on oral vote.

Discussion: SENATOR HOLDEN explained amendment 2. Amendment 2 would strike the Ethics Commission from the bill. He felt the Commissioner of Political Practices could handle the implementation of this bill. The people who would want to be on the commission would be politically interested.

SENATOR BAER stated both subcommittees recommended this commission.

SENATOR NELSON stated this was a very important part of the bill in both subcommittees. It was felt that the Commissioner of Political Practices could carry things up to a certain point, but when matters were beyond that there would need to be a commission to be a guidance factor and to help the Commissioner. As far as the political activities on page 17, someone who has been living in a vacuum would have no interest in serving on the commission. The restrictions would only apply for the four years the member served on the committee.

SENATOR HALLIGAN commented that the commission would be the buffer needed to make sure that all the new powers which would be granted would be administratively handled in a fair and unbiased matter. The public trust is worth the cost.

Motion/Vote: SENATOR HOLDEN MOVED TO AMEND SB 136. The motion FAILED on oral vote.

Discussion: SENATOR HOLDEN explained amendment 3. Amendment 3 dealt with filing tax returns. He stated more potentially good candidates may decide not to file for office without this
Although the language states this would not be

disclosed to the public unless it is essential to do so, he saw where this could become a political football depending on who was sitting on the commission and who the commissioner was.

SENATOR NELSON stated it was her understanding that a copy of the tax return would not be filed. Instead, this would involve filing an affidavit which said that a tax return had been filed.

SENATOR BISHOP commented the Department of Revenue testified twice regarding this and the committee felt it important that the candidate file a tax return.

SENATOR DOHERTY stated this would also include public employees. The Department of Revenue will come down on people who haven't filed taxes. This would cause a double punishment. He felt a person should only be beheaded once.

Motion/Vote: SENATOR HOLDEN MOVED TO AMEND SB 136. The motion CARRIED on oral vote.

Motion: SENATOR HALLIGAN MOVED TO FURTHER AMEND SB 136. (EXHIBIT 5)

Discussion: SENATOR HALLIGAN explained the amendment would strike the words "Requiring reporting of membership in organizations infringes upon the right to privacy and free association." He feels this language is unconstitutional.

SENATOR BAER stated the subcommittees felt this was important. He does not see it as unconstitutional in that it is not a condition of employment. Under the compelling state interest test, it is necessary to require this to avoid obvious conflicts of interest in people who will have discretionary powers.

SENATOR GROSFIELD stated this was discussed at some length in subcommittee and they agreed that this was a good provision. This does not say that these individuals cannot belong to any organization. It simply deals with disclosure.

SENATOR DOHERTY commented this applies to all public employees. In the case where a social worker would provide expert testimony to a judge about whether an individual's parental rights should be terminated or not and the social worker happens to belong to an organization that believes that mixed raced marriages are improper, and as a result of that belief, the social worker shades testimony about whether that individual's parental rights should be terminated. There are adequate safeguards in the law to determine a bias or prejudice on the part of anyone providing information or performing their duty. To require people to self report about their religion or organizations is reaching beyond the scope of their duties.

SENATOR BISHOP stated if a public employee is biased one way or another, it would take a period of time to deal with that.

SENATOR HALLIGAN commented if he were on the board of directors of a non-profit organization which had taken some specific action to sue the very agency he was involved with, he ought to be notifying his supervisor of his involvement in that non-profit. However, if he pays \$25 a year to an organization and has no control over their decisions, that would not be anyone's business.

Vote: The motion FAILED on oral vote.

Motion: SENATOR BARTLETT MOVED TO AMEND SB 136.

Discussion: SENATOR BARTLETT explained her amendment. - On page 9, lines 1 and 2, she would strike (b). This requires the supervisor to disclose the information about the employee to an interested person upon the person's request. There is nothing in the ethics legislation before us which would identify who an interested person would be and what that might be limited to. It is one thing to disclose that to a supervisor; however, it is another thing to require the supervisor to disclose the information to anyone who may be interested.

SENATOR HOLDEN asked if this would include local employees?

SENATOR BISHOP stated this would not go to local government.

SENATOR GROSFIELD explained this would also include a potential conflict of interest would have to exist. There only needs to be a disclosure when there is a potential conflict.

Vote: The motion FAILED on oral vote.

Motion: SENATOR NELSON MOVED TO AMEND SB 136.

Discussion: SENATOR NELSON explained the amendment which would be on page 5, line 11. She would delete the words "it costs in" and insert "the salary for". This would read, "(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary for performing the function from which the officer, legislator, or employee is absent;". Without the change, we could be tying in benefits.

Vote: The motion CARRIED on oral vote.

Motion: SENATOR DOHERTY MOVED TO AMEND SB 136. (EXHIBIT 6)

Discussion: SENATOR DOHERTY stated that he would withdraw amendment 3. Amendments 1 and 6 deal with private interest. On page 3, line 8, following "interest" he would insert "contract or lease". Explaining amendment 6, he felt if the interest in real property needed to be disclosed there could be an interest in contract or lease on real property which may affect the individual the same as being owner of record.

SENATOR GROSFIELD stated they discussed real property in subcommittee. They did not see a need to disclose real property.

Substitute Motion: SENATOR GROSFIELD MOVED TO AMEND SB 136 BY STRIKING LINE 8 ON PAGE 3.

SENATOR BARTLETT stated that the subcommittee reached the conclusion that it should be left in because while under the disclosure requirements on page 13, you would not have to disclose the house that you owned. However, there could be an interest in potential ethics issues if you owned a 150 apartment complex.

SENATOR GROSFIELD stated that if the individual's income was from the apartments, that would come out in the disclosure anyway.

SENATOR BISHOP stated he believed it was more important to have a contract or lease included than an interest in real property. An interest in real property can be found by searching records.

SENATOR GROSFIELD withdrew his substitute motion.

Vote: The motion on amendment nos. 1 and 6 FAILED on oral vote.

Motion: SENATOR DOHERTY FURTHER MOVED TO AMEND SB 136.

Discussion: SENATOR DOHERTY explained amendment no. 2 which would add the words "or entity" as a public employee. Entities do business with the state which are corporations, partnerships, etc.

Ms. Lane stated there was a general statute which stated that person includes both individuals, corporations, partnerships, etc.

SENATOR DOHERTY withdrew the amendment.

Motion: SENATOR DOHERTY FURTHER MOVED TO AMEND SB 136.

Discussion: SENATOR DOHERTY explained amendment nos. 4 & 5. This language may have a chilling effect on getting people to serve on hospital or library boards which would be a non-profit. Non-profits have a difficult time attracting people to boards.

SENATOR GROSFIELD stated there are a lot of cases where a non-profit may be just as much involved in a conflict as a for profit entity.

Vote: The motion on amendment nos. 4 and 5 FAILED on oral vote.

Motion: SENATOR BAER MOVED SB 136 DO PASS AS AMENDED.

Vote: The motion CARRIED on oral vote.

DATE _____

3/28/25

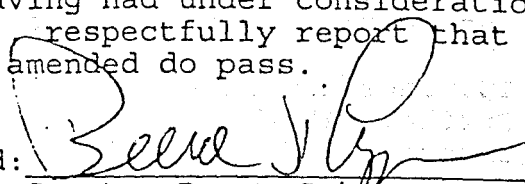
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SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 28, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 136 (first reading copy -- white) respectfully report that SB 136 be amended as follows and as so amended do pass.

Signed: 
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 27.

Strike: "PROVIDING THAT FILING TAX RETURNS IS AN ETHICAL REQUIREMENT;"

2. Page 4, line 14.

Strike: "16 and 17"

Insert: "15 and 16"

3. Page 4, line 15.

Strike: "15"

Insert: "14"

4. Page 4, line 16.

Strike: "22"

Insert: "21"

5. Page 5, line 11.

Following: "for"

Strike: "its costs in"

Insert: "the salary paid for"

6. Page 6, line 25.

Following: line 24

Strike: "affecting the constituents"

Insert: "as required in the joint rules of the legislature"

7. Page 7, line 20.

Strike: "15"

Insert: "14"

8. Page 9, line 14.

Strike: "16"

Insert: "15"

Strike: "22"

Insert: "21"

9. Page 14, lines 7 through 13.

 Amd. Coord.

 Sec. of Senate

711406SC.SPV

Strike: section 14 in its entirety
Renumber: subsequent sections

10. Page 15, line 11.

Strike: "17"

Insert: "16"

11. Page 18, lines 12 and 14.

Strike: "22"

Insert: "21"

-END-

SB 136 AA

Holder Amendment

①
Page 6 Line 24 Strike " ^{affecting the constituents} ~~participate in~~ "
Insert " ~~votes on~~ " Required in Legislative
process Rules

②
Page 15 Strike Lines 24 To 30
Page 16 Strike Lines 1 To 30
Page 17 Strike Lines 1 Thru 11
failed

③ Page 14 Strike lines 7 Thru 13
passed

Carried - 9/2/95
page 11

Amendments to SB 136
Proposed by Common Cause and MontPIRG
Prepared by Debra Smith and J.V. Bennett

Page 3, Line 28-

Insert new subsection-

(9) "Substantial value" means an amount equal to or greater than \$50 for an individual.

Current language leaves substantial value for gifts undefined.

Page 8, line 25 through page 9, line 2

Strike page 8, line 25 through page 9, line 2.

Requiring reporting of membership in organizations infringes upon the right to privacy and free association.

Page 12, line 27

Insert- (i) the value of which is greater than \$10,000; or

(ii) from which the individual receives 20% or more of the individual's expected annual income or in which the individual owns 20% or more of the value.

Current language does not differentiate between major and minor economic interests and requires reporting of all economic interests.

MontPIRG

Montana Public Interest Research Group

360 Corbin Hall - Missoula, MT - (406) 243-2908

Testimony For Senate Bill 136, March 27, 1995

Chairman Crippen and members of the Senate Judiciary Committee:

For the record, my name is J.V. Bennett, for the Montana Public Interest Research Group, or MontPIRG.

MontPIRG is a non-profit, non-partisan research and advocacy organization working for good government, consumer rights and sound environmental protection. MontPIRG represents over 4000 members in Montana, with 2200 student members, and is funded with membership donations.

As an organization advocating good government, MontPIRG rises in strong support of Senate Bill 136.

Senate Bill 136 is a significant step in increasing public confidence in their government. While Montana has been spared any major scandals, it is none the less important to establish safeguards concerning the ethical behavior of elected representatives and employees of the State. Senate Bill 136 does this and the Senate Ethics Subcommittee and the Joint Ethics Committee should be commended for their hard and thoughtful work.

Senate Bill 136 contains many important provisions for insuring ethical behavior on the part of officials and employees. Most important are ethical guidelines for behavior, meaningful enforcement for ethical violations, and disclosure of conflicts of interest.

However, MontPIRG believes there are still some problems with the current form of the bill. The most important of these is language requiring the disclosure of membership in organizations of a state official or employee in certain circumstances. We believe this is an unacceptable and probably unconstitutional infringement of an individual's right to privacy and free association. We urge that this provision be removed from the bill.

Amendments to Senate Bill No. 136
Second Reading Copy (yellow)

Requested by Senator Doherty
For the Committee on Judiciary

Prepared by Valencia Lane
March 27, 1995

1. Page 3, line 8.
Following: "interest"
Insert: ", contract, or lease"
2. Page 3, line 15.
Following: "person"
Insert: "or entity"
3. Page 8, line 25 through page 9, line 2.
Strike: subsection (4) in its entirety
Renumber: subsequent subsections
4. Page 12, line 28.
Following: "entity"
Insert: "organized for profit that is"
Following: "(2)(c)"
Insert: "and"
5. Page 12, lines 29 and 30.
Following: "director" on line 29
Strike: remainder of line 29 through "profit" on line 30
6. Page 13, line 2.
Following: "residence,"
Insert: "and all contracts or leases related to the real
property"

In addition, we feel that a gift of substantial value should be defined. Disclosure of financial interests should also be defined in greater detail. Currently the language in the bill does not differentiate between major and minor economic interests. It is our belief that major economic interests are those which are most likely to cause conflicts of interest, while minor ones are less likely to be relevant. The language from the Senate Ethics subcommittee would be preferable in both these instances.

Also of concern is the absence of enforcement provisions and prohibitions on lobbying for Legislators that are on par with those for public officials and employees. We also feel that expanding the scope of the Ethics Commission to include the issuance of advisory opinions would improve the bill. We hope the Judiciary Committee will consider these additions to Senate Bill 136.

MontPIRG urges the passage of Senate Bill 136 as an important step to increase public confidence in their government.

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN SENATOR LORENTS GROSFIELD, on
February 6, 1995, at 3:45 PM

ROLL CALL

Members Present:

Sen. Lorents Grosfield Chair (R)
Sen. Larry L. Baer (R)
Sen. Sue Bartlett (D)
Sen. Al Bishop, (R)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Greg Petesch, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Subcommittee Business Summary:

Meeting: SB 115, SB 136

CHAIRMAN LORENTS GROSFIELD presented a list of nine issues which
were identified at the last meeting which need to be discussed.

EXHIBIT 1 He suggested the committee review SB 136.

SENATOR BAER suggested the committee use copies of the grey bill.

CHAIRMAN GROSFIELD commented that SB 136 had a narrower scope
than 115. SB 136 amends current law.

SENATOR BAER explained that Section 1 consists of boiler plate
language and the Legislative Council decided to remove gender.
There aren't any substantive changes until (3), which is new. A
number of people have complained that there are few areas in
government where a government employee can leave his or her
duties as a government employee and serve in the legislature
while collecting both salaries.

Garth Jacobson commented this is not addressed in SB 115. Public
employee by definition includes all levels of state government.

What we are really looking at is a person drawing two salaries for the same time.

CHAIRMAN GROSFIELD stated at the time he was elected to the Senate, he was an elected supervisor for a conservation district. He had to resign that position before he could take the Senate position. He was also a member of the Board of Natural Resources and had to resign that position as well. That was not a double dipping issue. In the case of the Board of Natural Resources, it was a separation of powers issue. In the conservation district, he was not sure of the issue involved. It is his understanding that a Montanan cannot hold two elected positions at once.

Greg Petesch stated that there is a constitutional provision called dual office holding. It is a specific legislative prohibition which provides that no member of the legislature shall during the term of office for which they were elected, be appointed to a civil office under the state. There are a number of constitutional decisions, primarily under the 1889 Constitution. Recently a person alleged that Representative Bradley was in violation because she was a Special Master for a judge in a district court in Bozeman. The test has not changed over time. There is a similar prohibition that you cannot have two offices. This normally arises when a legislator resigns and is named to an acting position in a department. The "acting" language states that they are not formally in the position and that person is not confirmed by the Senate and that is the way the prohibition has been dodged. That is a separate issue. The "acting" capacity has never been challenged. He felt it was questionable.

SENATOR DOROTHY ECK stated that the statement is quite clear as written. It would cause some agencies to change their procedures. For instance, the teacher who now draws a salary and then pays his or her replacement. That board would have to change that policy and not pay a salary during the time they were in the legislature. People who work at the university do not receive a salary again until the next semester.

SENATOR BARTLETT stated that for the Butte teachers in their local school district this would be a part of their collective bargaining contract. All teachers who are absent are required to pay their substitutes. The salary would continue to go to the teacher who would then be responsible for paying the substitute.

SENATOR BAER stated that is the situation now. In many school districts the pay for a substitute teacher is so low that there is not much of an inducement for quality substitutes. The teacher must take the pay of the substitute out of their salary but they still collect the difference for not being there. As far as any contractual agreements now in existence, this would not affect those until they expired and it would then place the restriction not to do so again. This would not interfere with

any existing contractual obligation in regard to this situation.

Mr. Petesch stated the constitutional clause on impairment of contracts would protect those persons.

Mr. Jacobson commented they would need to consider the situation wherein a person would take a leave of absence and have accrued annual leave or comp time which they could take. The committee would need to define whether or not that would be permissible. The other item to consider would be whether retirement benefits would be considered as salary. If there are other benefits like disability, that should not be construed to be a salary.

Section 2.

SENATOR BAER stated that current law was like Moses coming down from the mountain with the ten suggestions rather than the ten commandments. These ethical principles should be requirements. It changes the discretionary nature of the language to something which would be required and provides for a penalty for those who breach their duty. We need some type of ethical enforcement. He and Mr. Petesch discussed the "public officer" or "employee" who should leave their job and use their knowledge and information for private benefit. They decided to use a 12 month period in which they could not use their insider information in a wrongful manner. Section 2 makes a requirement of adhering to ethical rules of conduct.

Mr. Petesch, in referencing the 12 months following voluntary termination of office, stated there are no formal interpretations or decisions under this provision because these are guidelines and a breach of a guideline is not a violation of a public trust. There is a six month revolving door provision in a different area of law. This is in 2-2-201 which states that a former employee may not within six months following termination of employment, contract or be employed by an employer who contracts with the state involving matters with which the former employee was directly involved during employment. There are no penalty provisions which apply. The contract would be voidable. That is a contracting situation only. This is the specific provision which is in litigation involving the former local government auditors for the Department of Commerce at this time. This lawsuit is still in district court.

SENATOR BAER stated if we only have "principles" intended as guides, why have ethics in the code at all?

SENATOR BARTLETT stated she questioned disciplinary action. As far as a public employee is concerned, their supervisor within an agency could take disciplinary action. That would not apply for public officers.

CHAIRMAN GROSFIELD questioned the situation wherein the governor or a legislator violated the statute, who would go after them? There is also no discussion as to what "disciplinary action" would mean or how it might be set. He asked what other states do in this regard?

Mr. Petesch commented disciplinary action involving a public officer or employee is usually a suspension, reprimand, censure, or reduction in grade. The MOMS manual covers disciplinary action. There are some administrative standards for disciplinary action.

SENATOR BAER stated they should consider the exclusion of legislators from some of these provisions since that seems to be the desire of the committee.

Mr. Petesch stated the existing definitions in this part of law provide that "public officer" does not include a judge or legislator. They are referred to as a "state officer".

Mr. Jacobson commented that this parallels Section 11 of SB 115. In the matter of agency enforcement, the individual would have already left the position.

SENATOR BAER stated that where there is a civil penalty involved. the judge could set a fine.

CHAIRMAN GROSFIELD suggested changing "and" to "or" so this sentence would state disciplinary action or civil penalty.

SENATOR BAER felt the major disciplinary nature of this would be the embarrassment which would follow.

CHAIRMAN GROSFIELD stated it would remain forever in their personnel file.

Section 3.

CHAIRMAN GROSFIELD commented that disciplinary action for a legislator might be a resolution by the body.

Mr. Petesch commented that there is a censure provision in current law. A member is censured by resolution. This would be accomplished by chastising the member formally on the record printed in the session laws for all the world to see. The only time it was seriously considered was when a senator submitted false information on the floor, had it printed and distributed to the members' desks knowing it was false. There has not been an impeachment action under the new Constitution. In the late 60s there was an impeachment action where a resolution of charges was filed but it did not pass the House of Representatives so the trial was not conducted. Impeachment is possible under current law. The Constitution gives each house the authority to judge the qualifications and seating of its own members. If a member

so offended the rest of the body, he could be disqualified from serving.

CHAIRMAN GROSFIELD questioned if the vacancy would be handled as if the member had resigned or died.

Mr. Petesch answered that it would create a vacancy.

SENATOR BAER commented that (2) previously provided that the legislator should consider disclosing a conflict. If there is a conflict of interest the legislator should be forced to disclose that there is a conflict and try to remove the conflict. Abstaining from official action is an area of great discomfort. He felt that many times there would be the opportunity to eliminate the conflict situation by eliminating the interest which causes the conflict.

CHAIRMAN GROSFIELD believed that in a 90 day legislature these issues would appear too fast. There would be no time to eliminate the conflict. Disclosing and abstaining would be reasonable.

SENATOR BAER stated they were having difficulty abstaining from official action in regard to the requirement to vote which is now in the rules of the Senate.

SENATOR ECK commented there would be a real problem because not only the legislator would have to eliminate an interest, it could be a grand nephew who would have to eliminate an interest.

SENATOR BAER thought it would be a bad situation to allow a direct and substantial conflict of interest by disclosing and then voting anyway.

CHAIRMAN GROSFIELD referred to (3) which, when the double negative is taken out, says that a conflict situation does arise from legislation that does directly effect the entire membership of a class. This states that the conflict situation arises if you are a member of a class.

SENATOR BAER stated his intent was to not hold a legislator in a conflict situation where he or she was a member of a profession or occupation or a class as the code currently states. He reversed this for a public employee. If they were a member of a class, profession or a group, they should not be given special treatment. Public employees should have to live to a higher standard of ethics rather than a lesser standard of ethics which is what is implied by current law.

SENATOR ECK commented that if a legislator is a member of a class, they could vote on something that affects that class and a public employee may not. What would happen if the legislator had a wife, niece, etc., who was a public employee?

SENATOR BAER stated that it would affect the legislator if it would affect someone in his or her direct family. The legislator would be helping them by the way of vote. This language appears in the nepotism section.

CHAIRMAN GROSFIELD commented there were two issues in (3). The first issue addresses, for instance, a rancher voting on an ag issue if it affects the whole class. There could be a situation where it affects the legislator directly but also affects other ranchers directly. The other issue is the question of consanguinity.

SENATOR BAER suggested modifying that to read direct family members to include either spouse and children or just spouse.

Section 4.

CHAIRMAN GROSFIELD stated this is a general section which applies to everyone. The issue is using public resources and time for campaigns or lobbying or to influence political decisions.

SENATOR BAER commented this was the main crux of the bill. This is where 98% of the problem lies. Legislators are insignificant compared to the problems caused by public employees who use their position to wrongfully or unduly influence political issues or elections. There is a lot of it going on. He has many examples of problems.

CHAIRMAN GROSFIELD questioned whether current law dealt with this specifically. SENATOR ECK'S bill addresses it.

Mr. Argenbright stated that 13-35-226 (3) states, "No public employee may solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at his place of employment. However, nothing in this section is intended to restrict the right of a public employee to express his personal political views."

CHAIRMAN GROSFIELD commented that the code of ethics is in Title 2, election laws are in Title 13, and the authority for the disclosure form is in Title 5.

Mr. Petesch commented that criminal law was also involved.

SENATOR BAER commented that there is a problem because this activity goes on all the time. These people are never reprimanded, prosecuted and there is no disciplinary action taken. There have been blatant situations regarding a school mill levy wherein a notice is printed on school paper using a school computer and sent home with children threatening parents that if they don't vote for the mill levy horrible things will happen. A complaint may be filed but nothing ever comes of it.

CHAIRMAN GROSFIELD asked what the enforcement would be under Title 13.

Mr. Argenbright commented that there had been complaints filed with his office and he has conducted investigations. The question comes down to whether informing parents about the effects of a loss of funding in the mill levy is an attempt to influence the outcome of the election. Based on their legal advice, it has to be a very direct solicitation of a "no" or "yes" vote. It has to be very direct. The school trustees are elected officials who can give their views.

SENATOR BAER commented these flyers are printed at the order of school superintendents and principals, not trustees. They are sent out to influence an upcoming election. Something needs to be done to strengthen the law so that Mr. Argenbright can take action on this type of wrongful behavior. Public funds should not be used to influence elections.

CHAIRMAN GROSFIELD asked who would handle the enforcement under 2-2-121.

Mr. Petesch commented that existing (6), which becomes (5), has both a civil and a criminal provision attached to it. The criminal provision would be handled by the county attorney. The civil provision could either be the agency or the county attorney could seek concurrent civil and criminal penalties.

SENATOR BAER asked if that would take it away from Mr. Argenbright's jurisdiction.

Mr. Petesch commented they have not amended the provision in Title 13, but with this provision in place Commissioner Argenbright would see a lot less complaints.

SENATOR BARTLETT questioned the associations of various groups of school or public employees who pay dues to an organization from their tax revenues and then represent their interests before the legislature. She would see that as different from the use of public facilities, etc. This deserves specific attention.

CHAIRMAN GROSFIELD commented that entities such as Montana School Board Association, League of Cities and Towns, MACO, etc., are covered by dues which all come from taxpayer dollars.

SENATOR ECK stated that there are usually quite a few lobbyist from state government who testify at the legislature. Previously, they did not register as lobbyists.

Mr. Petesch stated that that was the practice. Legislative committees grew weary of the practice of public employees, particularly department directors, sitting in hearings and saying they were only there to provide technical information or respond to comments when they supported or opposed virtually every bill.

The decision was made that if they were going to show up and support or oppose legislation, they would have to be registered.

SENATOR ECK commented she could see real problems for committees such as taxation. If they could not have the various division directors there to ask questions, they would have a difficult time operating.

SENATOR BAER stated this is addressed in line 20 through 23 on page 4. There are exceptions if it is authorized by law or is properly incidental to another activity. The problem which arises is when an MSBA lobbyist comes up during the legislative session and tries to influence votes of the legislators. There we have public funds paying for a lobbyist to do just the very thing we are trying to prohibit.

CHAIRMAN GROSFIELD questioned how the school boards around the state would have effective representation in the legislature when they are dealing with school budgets or an issue such as who would qualify to be a school board member.

SENATOR BAER commented they should send their trustees to give input. This way they would not be using public funds, money, time, and resources. Volunteers serve on school boards.

CHAIRMAN GROSFIELD stated they were talking about school boards, county commissions, and conservation districts.

SENATOR BAER stated he had a problem with Fish and Game employees appearing at Trout Unlimited banquets in uniform trying to further the advancement of Trout Unlimited ideologies on public time. Collectively, it is a bad mentality for our public funds and resources to be used for private purposes.

CHAIRMAN GROSFIELD posed a situation wherein he was a director of the Montana Stockgrowers and at their annual meeting there would be a contentious issue presented. If he decided it was best for his membership to get the word from an expert, he may call Fish and Game and ask that someone speak at their meeting to explain the deal. Line 23, page 4, states "in the normal course of their duties."

SENATOR BAER agreed that would be in the normal course of their duties. This differs from influencing a decision made by a public body.

Mr. Jacobson stated that in this language it would appear to him that Professor Natelson would be prohibited from doing anything during the term of his contract. How would a person be able to exclude his salary for a portion of that year where he was doing things other than teaching activities?

CHAIRMAN GROSFIELD commented that even Professor Natelson would have some spare time and he could do whatever he wants in his spare time.

SENATOR BAER commented that Professor Natelson is very careful to use only his spare time since he is one of the major advocates of this. He is very cautious about anything improper in using public time or resources.

Mr. Jacobson stated it is hard to identify that time. For college teachers, this might be construed as the time of their contract.

SENATOR BAER stated he had an on/off duty situation as would anyone who works for an employer. When he is off campus doing his own thing and not using university resources to do so, he is exercising his first amendment rights.

CHAIRMAN GROSFIELD stated the issues in respect to Section 4 would be: use of public times and facilities and local governments putting public money into lobbying.

Section 5

CHAIRMAN GROSFIELD commented this section deals with local government officers and employees. This would deal with rules the legislature might set for local government officers and employees, which would cover county commissioners, school teachers, janitors, etc. Line 18 deals with disclosing and eliminating a conflict of interest.

Mr. Petesch stated SB 115 leaves the local government provisions in place and unchanged.

SENATOR BAER stated this provides for disciplinary action.

CHAIRMAN GROSFIELD stated the rules and the penalty are the same as they would be for a legislator.

SENATOR BARTLETT commented that at the very end the member is required to disclose and eliminate the interest.

CHAIRMAN GROSFIELD commented that the difference is that a legislator could disclose or refrain from action where this says disclose and eliminate.

SENATOR ECK said that many requirements for public employees and officials would refer to the local government sections.

Mr. Petesch stated that SENATOR BAER'S inclusion of public employee extends those requirements to all state and local government employees. He does not extend them to local government officers except in this section. Public officers refers to state officers and elected officers of subdivisions of

the state. It excludes legislators and judges. He suggested visiting the definitions in existing law because there is some ambiguity in them.

SENATOR ECK stated the bulk of SB 115 does not address local governments. She stated they had prepared amendments so that section was not left by itself.

Mr. Jacobson commented on his handouts. One document, EXHIBIT 2, is a survey of all the agencies. It is a list of all the agencies which were sent questionnaires regarding ethics activities of each agency. Approximately half of the agencies responded and identified what their agency does or doesn't do regarding ethics. The other document, EXHIBIT 3, is a checklist to show what areas the ethics legislation covers. It is also a guide as to what type of issues may be raised.

CHAIRMAN GROSFIELD questioned if this is covered in current law?

Mr. Jacobson answered that agencies covered different items. SB 136 and SB 115 beef up what can or cannot be done. Under current law, a lot of things are not being done. This gets back to enforcement and ambiguity.

CHAIRMAN GROSFIELD asked Mr. Jacobson to summarize how most agencies responded to the question of having personnel matters involving ethics violations handled by an independent outside agency or by their own agency.

Mr. Jacobson stated that most agencies wanted to have initial internal control. They try to give that to them by not setting anything in motion until a formal complaint is filed with the Commissioner of Campaign Practices. That would give them an opportunity to go outside the agency. All personnel matters would be handled internally and that is consistent with what most of the agencies wanted. Flagrant violations would go beyond the agency itself.

CHAIRMAN GROSFIELD stated that within the Department of Administration there was the state personnel office. He questioned whether they would be involved in ethics issues.

Mr. Fetesch answered that they provide some training but have no explicit authority over ethics. They do adopt the MOMS manual which has some guidelines.

Mr. Jacobson commented that in talking with Mr. Seacat from the Legislative Auditor's Office, he indicated that their hotline had about 400 calls of which 100 would probably be legitimate. Of that 100, 30 or so involved conflict of interest matters of state employees. There was no enforcement mechanism or agency control which could deal with those problems which he considered to be legitimate concerns.

CHAIRMAN GROSFIELD commented the language in SENATOR BAER'S bill would give them the requirement to do something internally within the agency.

Mr. Jacobson stated there is confusion regarding enforcement of civil penalties. One agency may give a slap on the wrist whereas another agency may totally level the employee. He would suggest one consistent prosecution entity.

SENATOR BAER commented that a self regulatory atmosphere in regards to ethics would be very prudent. There would be too much possibility of abuse and lack of enforcement. A mechanism is necessary to enforce ethics but it should not be a \$600,000 bureaucracy.

CHAIRMAN GROSFIELD asked if the Commissioner of Political Practices dealt with public employees.

Mr. Argenbright stated they deal with candidates and elected officials but they do have the statute which deals with public employees abusing company time.

Mr. Petesch commented on current law definitions. "Compensation" has a term "thing of value". This would become important in both bills in terms of gifts. "Employee" is defined for purposes of the state only and the term "public employee" is used extensively in SB 136. If it is to apply to local government employees, it may need to be clarified. "Financial interest" is an existing, defined term. In SB 115 "anything of value" is defined. "Public officer" has a series of "ors". This includes any state officer except a legislator or member of the judiciary or any elected officer. The "or any elected officer" goes back to "includes". That definition should be clarified.

CHAIRMAN GROSFIELD commented the Constitution states prohibiting conflict between public duty and private interest. The code of ethics defines financial interest but not private interest.

Mr. Petesch stated the existing code of ethics does not use private interest. Financial interest is made the equivalent of private interest.

CHAIRMAN GROSFIELD commented that it might make sense to pull all ethics issues into one Section.

ISSUES IDENTIFIED FOR ETHICS SUBCOMMITTEE

- (1) Education function concerning ethics in government.
- (2) Gifts:
 - (a) 5-7-208(5) requires \$25 for purposes of lobbying
-- \$25 amount was established in 1980;
 - (b) add criteria in 2-2-104(1)(b)(i)? (gifts that tend to improperly influence)
- (3) Disclosure statements: filing and timing.
- (4) District officials status should be clarified: state office elected from a district or county/state subdivision offices.
- (5) Nepotism - clarify status of pages, other legislative session staff, elections judges, etc.
- (6) Clarify "Gain of another" page 8, line 13. Clarify exemption on lines 14 and 15. Clarify lines 26 and 27.
- (7) "Conflict of interest" disclose conflict and vote or not vote.
- (8) Level of financial disclosure. Content -- applicability (who is required to file). Current law v. political practices form v. SB 115
- (9) Role of commission: education, advisory opinions, enforcement.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 2/6/95
BILL NO. SB 115
SB 136

MONTANA STATE GOVERNMENT
Departments and Directors

Department of Administration
Ms. Lois Menzies, Director

Department of Agriculture
Mr. Leo Giacometto, Director

State Auditor's Office
Honorable Mark O'Keefe, State Auditor

Department of Commerce
Mr. Jon Noel, Director

Dept of Corrections and Human Services
Mr. Rick Day, Director

State Board of Education
Mr. Wayne Buchanan, Executive Secretary

Department of Family Services
Mr. Hank Hudson, Director

Department of Fish, Wildlife & Parks
Mr. Pat Graham, Director

Governor's Office
Honorable Marc Racicot, Governor

Dept of Health & Environmental Services
Mr. Bob Robinson, Director

Montana Historical Society
Mr. Brian Cockhill, Director

Montana Supreme Court
Honorable Ed Smith, Clerk Supreme Court

Department of Justice
Honorable Joe Mazurek, Attorney General

Department of Labor and Industry
Ms. Laurie Ekanger, Commissioner

Department of Military Affairs
Mr. John Prendergast, Adjutant General

Montana Advocacy Program, Inc.
Ms. Kris Bakula, Executive Director

Dept of Nat. Resources & Conservation
Mr. Mark Simonich, Director

Commissioner of Political Practices
Mr. Ed Argenbright, Commissioner

Office of Public Instruction
Honorable Nancy Keenan, Supt of Pub Inst

Department of Public Service Regulation
Ms. Madeline Cottrill, Administrator

Department of Revenue
Mr. Mick Robinson, Director

Secretary of State
Honorable Mike Cooney, Secretary of State

Dept of Social and Rehabilitation Services
Mr. Peter Blouke, Director

State Capitol Employees Credit Union
Mr. Gene Rice, President

Department of State Lands
Mr. Bud Clinch, Commissioner

State Library
Mr. Richard Miller, State Librarian

Department of Transportation
Mr. Marvin Dye, Director

Montana University System
Mr. John Hutchinson, Cmiss of Higher Ed

TO: Garth Jacobson, Chief Counsel
Secretary Of State

FROM: Frank Graham, DMA *FRANK*

DATE: December 15, 1993

SUBJECT: Ethics in Government

Garth:

Your recent request for information on ethics policies in state agencies was given to me for input by The Adjutant General. While I'm not aware of what his final reply to your committee was, I'd like to take an opportunity to expand on a concept as a private citizen and a public servant.

One of the difficulties we face in state government is the inability of the average employee to find redress within the system. None of us has to look very far or listen very hard before we begin to see and hear of examples of conduct which, in a well managed organization, would not be tolerated. Examples of abuse of authority by mid- and senior-level managers, and fraud and waste at all levels abound. Fortunately, many of the abuses are relatively minor and many are not prosecutable crimes but, cumulatively, they contribute to the popular conception of lazy or inefficient state employees and, by extension, a lousy government. Yet those who become aware of such transgressions generally feel as if there is little they can do about them. (I'm also convinced that is a significant reason many are taking advantage of early retirement incentives. It's not just pay scales! But that is a subject for another discussion.)

Samuel Huntington has pointed out that one of the hallmarks of a "profession" is the fact that it polices itself internally. The American Bar Association and the American Medical Association are cogent examples (regardless of how we individually feel about their effectiveness). We don't do that in state government, although we'd like very much to consider ourselves professionals! In too many cases, there is a very legitimate fear that "my job is in jeopardy if I rock the boat too much." Folks are just afraid or wary of voicing their concerns. There is no effective mechanism to investigate and take action on such allegations. There is no means to provide confidentiality to the accuser or the accused and there is no protection against retribution.

I'd like to offer the Inspector General concept as a model to examine for internal regulation. The concept was initiated in the military in the last century but in 1978 the Congress required all federal agencies to create such a position. Subsequently, a number of states have also adopted the concept. Essentially, the Inspector General is an official, organizationally subordinate only to the chief (the governor in our case),

whose principle function is to accept complaints or allegations about fraud, waste, and abuse; investigate the complaints in a thorough and impartial manner; and make recommendations to the organizational leadership for corrective action. Principle operational tenets include a relationship of special trust and confidence with the chief, guarantees of confidentiality to accuser whenever possible, guarantees of protection to the accused against false accusations, unlimited access to the organization (within the scope of each specific investigation), and independence from undue influence from organizational leadership (not a political appointee) yet high enough in the organization to guarantee access and authority. I've enclosed selected excerpts from the current Army regulation covering Inspector General activities.

The model is not without challenges in Montana, not the least of which are the classic conflicts of the public right to know versus the individual right to privacy. The scope of authority of the Inspector General must be very carefully defined. Some Inspectors General have subpoena authority, some do not. Clearly there will be resistance from agencies accustomed to working autonomously. And there will be resistance to establishing any new bureaucratic function. But, if we agree there are standards of acceptable conduct in state government, then we must agree that, human nature such as it is, some will violate those standards, and there will be a need to somehow police the system.

My experience with the Inspector General system was in the Army (my last eight years of active duty), but I was privileged to serve at the national level and, in that capacity, was exposed to the operation of other IG systems, civilian as well as military. I'd enjoy an opportunity to discuss the concept further with you or the committee.

If we are to give the government of the state of Montana back to the citizens of the state, if we are to restore pride in being state employees, we must have standards - high standards - against which we are willing to be measured. Public service requires public trust and an independent, objective Inspector General could be an agent to help regain that trust.

Enclosures

Chapter 1

The Inspector General Corps

Section I

Introduction

1-1. Purpose

This regulation—

- a. Prescribes policy and procedures concerning the mission and duties of The Inspector General (TIG) of the Army.
- b. Prescribes duties, missions, standards, and requirements for inspectors general (IGs) throughout the Army.
- c. Prescribes responsibilities of commanders, State Adjutants general (AGs), and heads of agencies, activities, centers and installations for support of IG activities.

1-2. References

Required and related publications and prescribed forms are listed in appendix A.

1-3. Explanation of abbreviations and terms

- a. Abbreviations and special terms are explained in the Glossary.
- b. The acronym DAIG stands for Department of the Army Inspector General. The term SAIG is a basic office symbol used by Office of The Inspector General and by the U.S. Army Inspector General Agency.
- c. Citations of U.S. statutes are abbreviated. For example, a reference to section 3014, title 10, United States Code is abbreviated 10 USC 3014.

1-4. Statutory authority

- a. 10 USC 3014 establishes TIG within the Office of the Secretary of the Army (SA) and assigns TIG sole responsibility within the Office of the Secretary and the Army Staff for IG functions.
- b. 10 USC 3020 states TIG's statutory mission and provides for deputies and assistants for TIG.
- c. 10 USC 3065 provides for detail of commissioned officers as IGs.
- d. 10 USC 271 authorizes screening of Army Reserve IGs.
- e. 24 USC 60 requires TIG to annually inspect the U.S. Soldiers' and Airmen's Home.
- f. 32 USC 105 provides for inspection of the Army National Guard (ARNG) on matters of Federal concern.
- g. 32 USC 315 provides for detail of commissioned officers and enlisted personnel of the Regular Army for duty with the ARNG.

Section II

Responsibilities

1-5. The Inspector General (TIG)

When directed by the SA or Chief of Staff, U.S. Army (CSA), TIG shall—

- a. Inquire into and report upon the discipline, efficiency, and economy of the Army.
- b. Perform any other duties prescribed by SA or CSA.
- c. Periodically propose programs of inspection to SA and shall recommend additional inspections and investigations as may appear appropriate.
- d. Cooperate fully with the Inspector General of the Department of Defense (IG, DOD) in connection with the performance of any duty or function by the IG, DOD under the Inspector General Act of 1978 (5 USC App. 3) regarding the Department of the Army (DA), and DODI 5106.3, paragraph D.2.
- e. Provide the SA and CSA a continuing assessment of command, operational, managerial, logistical and administrative effectiveness of the Army.
- f. Inquire into and report on the state of economy, efficiency, discipline, morale, esprit de corps, and readiness of the Army.
- g. Maintain liaison with IG, DOD, Inspectors General (IG) of the other military services, other statutory IGs, and other agencies concerning Army IG activities.

h. Serve on boards, committees, councils and similar organizations as directed by SA and CSA.

i. Monitor and report to the SA and CSA on the effectiveness of the Army IG system.

j. Publish IG policy and procedures for Army IGs.

k. Approve or disapprove nominations of soldiers to be IGs; approve or disapprove the removal or early release of soldiers from IG duty.

l. Conduct the Department of Army Inspector General (DAIG) Course for personnel selected to be IGs.

m. Maintain custody of DAIG records on behalf of SA; serve as the Access and Amendment Refusal Authority for Privacy Act requests for all IG records; serve as the Initial Denial Authority for Freedom of Information Act (FOIA) requests for all IG records.

n. Serve as the functional proponent and manager for inspector general information systems and subsystems.

o. Coordinate inspection and audit schedules with IG, DOD General Accounting Office (GAO), and U.S. Army Audit Agency (USAAA) and provide information about IG, DOD, GAO, and USAAA inspections and audits to IGs worldwide.

p. Conduct long range planning and mobilization planning for DAIG and the IG system.

q. Give assistance and—

(1) Provide a system for resolving problems of soldiers, family members, civilian employees of the Army, and retirees; protect confidentiality and guards against reprisal.

(2) Process Hotline cases that relate to Army activities.

(3) Conduct assistance visits to active and reserve units.

r. In the areas of inspection, technical inspection, and investigation—

(1) Conduct inspections and assessments directed by SA, Under Secretary of the Army (USofA), CSA or Vice Chief of Staff of the Army (VCSA), determined necessary by TIG, or prescribed by law or regulation.

(2) Report inspection results to the directing authority; identify root causes, recommend solutions, and fix responsibility for implementation.

(3) Establish a system to identify potential inspection issues and recommend inspections to SA and CSA.

(4) Serve as proponent for Army inspection policy.

(5) Conduct followup inspections to evaluate the effectiveness of solutions implemented.

(6) Publish inspection guidance for and conduct the Army nuclear and chemical surety programs and inspection systems.

(7) Implement the Army's portion of the Defense nuclear weapons technical inspection (NWTI) system.

(8) Support the Director, Defense Nuclear Agency (DNA), executing of DNA's nuclear weapons technical inspection responsibilities.

(9) Conduct the DA Nuclear Surety Program Inspection (NSPI) and Chemical Surety Program Inspections (CSPI) Orientation Course.

(10) Review the Army's nuclear and chemical-related maintenance, diagnostic and evaluation quality assurance inspection program.

(11) Conduct investigations directed by SA, USofA, CSA, VCSA, or as determined necessary by TIG and submit the report of investigation to the directing authority.

s. For intelligence oversight, exercise oversight of intelligence activities as prescribed in AR 381-10.

t. Provide followup and—

(1) Serve as the Army's followup official and manage the Army's audit followup system.

(2) Publish Army followup policies for DAIG inspections and for internal and external audits of Army matters.

(3) Manage the command reply process for response to USAAA audit reports.

(4) Perform on-site followup of selected inspection and audit findings and recommendations.

(5) Mediate disagreements between Army commands, the Army Secretariat, the Army Staff (ARSTAF) and USAAA.

Section IV
Sphere of Activity

1-12. IG activities

a. The IG sphere of activity includes everything for which the commander or State AG is Federally responsible and over which the commander or State AG has Federal authority.

b. The IG is an extension of the eyes, ears and conscience of the commander or State AG. The IG's relationship with the commander or State AG is one of extraordinary trust and confidence. The IG is normally granted a high degree of independence and unlimited access to information in performing IG duties. The IG normally has direct access to the commander or State AG. To be fully effective, the IG must have the full support of the commander or State AG and the confidence of the command or activity. This confidence is obtained only when the command understands that the IG is an extension of the commander or State AG and that the commander or State AG has complete trust and confidence in the IG. To protect this independent and special relationship, the commander or State AG must rate the command or State IG. (See AR 623-105, paras 3-1d and 3-17a(2).)

c. IGs will not establish command policy except as provided in AR 1-201. IGs have no directive authority outside IG channels, beyond that normally associated with their ranks. Any additional authority must come from their commander.

d. IGs are authorized access to all documents and all other evidentiary materials needed to discharge their duties. These documents and materials include normally protected data. Examples are: classified documents, records of board proceedings, acquisition information, medical records, medical quality assurance records, drug and alcohol records, financial records, evaluation reports, back channel messages, security dossiers, criminal investigation reports, personnel. Restricted fiche (R-fiche) (after compliance with AR 640-10), and financial disclosure statements. This authority may include direct access to pertinent extracts under applicable regulations. IGs must present proof of their security clearance or special access to review classified documents. They also must present sufficient justification to the record holder to obtain sensitive records. Should compartmentation or classification restrictions preclude immediate access to information required by an IG, the denying commander will immediately report the situation to the appropriate access control authority for an access eligibility determination. If this does not result in granting access, the IG will notify the commander and TIG of the situation. The notice to TIG will include the location, date, and command; scope of inquiry, inspection or investigation; who denied access; who verified denial and approved denial; and the reason access was denied.

1-13. IG guidelines for Army National Guard (ARNG) matters

IG activities within the ARNG are, with some exceptions, the same as for the active Army and the United States Army Reserve (USAR). Exceptions are stated in appropriate sections of this regulation. For Air National Guard (ANG) matters, Army personnel serving as IGs for the National Guard (NG) will follow these guidelines:

- a. IGs will not inspect ANG units.
- b. At the discretion of the State AG, requests for assistance from ANG personnel or family members may be received and processed by the State IG office.
- c. The State AG may direct an IG investigation of ANG personnel. If technical support for the investigation is needed from outside of the State, that support will be requested through the Chief, National Guard Bureau, ATTN: NGB-IG, WASH DC 20310.
- d. Release of IG records involving ANG units or personnel will be coordinated by the National Guard Bureau (NGB) IG, the Records Release Office, USAIGA and with the Air Force Inspector General.

Section V
Punitive Prohibitions

EXHIBIT 2

DATE 2-6-95

1-14. Prohibited activity SB 115, SB 136

a. Prohibition on restricting lawful communication with an IG, Member of Congress, or the Office of Special Counsel (OSC). Persons subject to this regulation will not restrict anyone in any manner from lawfully communicating with an IG, Member of Congress, or the OSC. This prohibition also applies to communications with the DOD IG and the IGs of other Services and Federal agencies.

b. Prohibition on taking reprisal against someone for lawfully communicating with an IG, Member of Congress, or the OSC. Persons subject to this regulation will not take or threaten to take an adverse action (see glossary), or withhold or threaten to withhold a favorable action, as a reprisal against a person who lawfully communicates with an IG, Member of Congress, or the OSC. This prohibition also applies to communications with DOD IG and the IGs of other Services and Federal agencies.

c. Prohibition against making an unlawful communication with an IG, a Member of Congress, or the OSC. Persons subject to this regulation will not knowingly make an unlawful communication with an IG, Member of Congress, or the OSC. An example of unlawful communication is a false official statement (Article 107, Uniform Code of Military Justice (UCMJ)). This prohibition also applies to communications with DOD IG and the IGs of other Services and Federal agencies.

d. Persons subject to the UCMJ. Persons subject to the UCMJ who violate the above prohibitions are subject to punishment under the UCMJ. They are also subject to adverse administrative action and other adverse action authorized by the United States Code or Federal regulations. Civilian employees not subject to the UCMJ who violate the above prohibitions are subject to disciplinary action under AR 690-700, chapter 751 or criminal prosecution authorized by the United States Code or Federal regulations.

e. Reporting prohibited actions. Persons who believe an action prohibited by paragraphs a, b, and c above has occurred, should report the circumstances to the chain of command or to the local inspector general. Alternatively, the circumstances may be reported to a higher headquarters IG listed in the permanent notice of rights to submit complaints that is posted on local bulletin boards. (See fig 7-1 and 7-2.)

1-15. Confidentiality

a. Persons who ask the IG for help, make a complaint, give evidence, contact or assist an IG during an inspection or investigation, or otherwise interact with an IG, often have an expectation of confidentiality. This expectation encompasses safeguarding their identity and the nature of their contact with the IG, and protection against reprisal. The IG has a duty to protect confidentiality to the maximum extent possible, particularly when it is specifically requested. While the need for confidentiality and the measures necessary to protect it will vary with the circumstances, the IG always gives them priority attention.

(1) When a person complains or provides information about impropriety or wrongdoing, the IG will not disclose the person's identity as complainant outside IG channels or the directing authority without the person's consent, unless the IG determines such disclosure is unavoidable during the course of an inquiry or investigation. If the IG determines that disclosure is unavoidable, the IG will try to inform the person before disclosure. If the person objects, the IG will coordinate with the Legal Office, USAIGA, before proceeding. Efforts to notify the person and the circumstances of any disclosure of the person's name will be made part of the record.

(2) When a person seeks assistance from the IG, it is often necessary to reveal the person's identity to obtain the help needed. The IG will inform the person of that necessity. The IG file will reflect the person was informed.

b. When a person requests anonymity, the IG will take more extensive measures to protect the person's identity. The person's name will not be used as a file identifier or as a means to retrieve a

(6) Serve as the Army's point of contact for receipt and control of all GAO and IG, DOD audit reports and task the appropriate Army agency or command for preparation of responses to audit reports.

(7) Disseminate information concerning GAO and IG, DOD audit reports within Headquarters, Department of the Army (HQDA); prepare weekly summary of significant audits.

1-6. Inspectors General (IG)

a. Inspectors general will—

(1) Determine the state of economy, efficiency, discipline, morale, esprit de corps, and readiness throughout the command.

(2) Provide the commander or State AG with a continuous, objective and impartial assessment of the operational and administrative effectiveness of the command.

(3) Conduct inspections, investigations, and inquiries directed by TIG, the commander or State AG, or as prescribed by law or regulation. A report will be provided to the directing authority.

(4) Monitor effectiveness of IG functions within the command or State. Inform the commander or State AG of this effectiveness and other matters concerning IG functions.

(5) Participate in the Program Budget Advisory Committee (PBAC) cycle at major Army command (MACOM), installation or State level. Budget for all IG functions. This includes identifying required budget and manpower resources and establishing the means to account for funds during budget execution.

(6) Provide oversight of intelligence activities within their command in accordance with Army Regulation (AR) 381-10, and as prescribed by Executive Order (EO) 12333 and DOD 5240.1-R.

(7) Serve as the office of record, on behalf of the Secretary of the Army, for all IG records which originate in their offices.

(8) Process requests for release or amendment of IG records (see chap 3).

(9) Perform audit and internal control functions as follows:

(a) Review the command or State's audit followup system to ensure effectiveness and compliance with AR 36-2.

(b) Perform audit followup when directed by the commander or State AG, or by TIG.

(c) Review internal control programs during the normal course of inspections (see AR 11-2), to determine if—

1. Policies, standards, and requirements have been effectively implemented (including procedures for supplementing and using internal control review checklists).

2. Management has taken effective action to address internal control problems identified in audit/inspections findings and recommendations.

(10) Forward problems that cannot be corrected at the local level through command and/or IG channels.

(11) Teach Army systems, procedures, and processes to help the inspected activity improve operations and accomplish command objectives.

(12) Train IG personnel not required to attend the IG training course. Use the Programs of Instruction (POIs) provided by the Training Division, U.S. Army Inspector General Agency (USAIGA).

(13) Serve as ombudsman for soldiers and civilians who request assistance through the Inspector General Action Request (IGAR) process.

(14) Provide IG support to Program Manager (PM) and Program Executive Offices (PEO) through their functionally aligned MACOM and major subordinate command (MSC) by—

(a) Responding to requests for inquiries, assistance, investigations, and inspections.

(b) Conducting independent inquiries, assistance, investigations, and inspections associated with programmatic functions (such as, management, cost, schedule, and performance) performed by the PM/PEO. The MACOM/MSC retains authority to direct and approve investigations and inspections. However, coordination will be made with the PM/PEO prior to final approval or disapproval of investigation and inspection results.

(15) Inspect issues designated "special subjects for inspection" as part of inspection programs and provide feedback to TIG, as required. Also, IGs will consider incorporating "Army senior leadership concerns" into scheduled inspections. (See glossary.)

(16) Conduct followup inspections of action taken on inspection findings and recommendations.

(17) Input all IG inspection findings, and investigations and assistance data into the Inspector General Worldwide Network (IGNET) data base.

(18) Conduct long-range planning and mobilization planning for IG activities in the command or State.

(19) Report to TIG, within 1 week of receipt, all allegations of impropriety by general officers, members of the Senior Executive Service (SES), and other Army civilian employees of comparable rank or position. (see para 8-3i.)

b. IGs perform the functions described in this regulation and other ARs and IG publications as follows:

(1) Planning and Analysis (Technical Bulletin (TB) IG 1).

(2) Inspection (AR 1-201, and TB IG 1), including technical inspections.

(3) Assistance (TB IG 4).

(4) Investigation (TB IG 4).

(5) Teaching and training.

(6) Followup (AR 1-201, AR 36-2, and TB IG-1).

1-7. Commanders, State AGs, Principle HQDA Officials, activities, centers, and installations

Commanders, State AGs, Principle HQDA Officials, activities, centers, and installations will—

a. Ensure all personnel under their jurisdiction are informed of their right to register complaints, with or request assistance from an IG. (See para 7-3.)

b. Ensure that persons registering complaints with any IG, including Department of Defense (DOD) and other service IGs, are afforded protection from reprisal actions as a result of the person's contact with the IG. (See para 1-14.)

c. If a host commander, provide IG support for tenant organizations, agencies, and activities of other commands as established by agreements between the MACOMs concerned.

d. Report to TIG, within 1 week of receipt, all allegations of impropriety by general officers, members of the SES, and other Army civilian employees of comparable rank or position. (See para 8-3i.)

Section III

Organization

1-8. The Inspector General

TIG is a confidential representative of the Secretary of the Army (SA) and the Chief of Staff of the Army (CSA). TIG serves on the personal staff of the SA and has direct access to CSA. TIG commands the U.S. Army Inspector General Agency (USAIGA).

1-9. Office of The Inspector General (OTIG)

The OTIG is the HQDA agency that coordinates IG activities. The OTIG includes TIG, Deputy The Inspector General (Investigations, Assistance, Training and Information Management), Deputy The Inspector General (Inspections), and Executive.

1-10. The U.S. Army Inspector General Agency (USAIGA)

USAIGA is a field operating agency of the OTIG. The operational resources responsive to TIG are assigned to USAIGA.

1-11. Inspectors General (IG)

IGs are assigned to commands, agencies, activities, centers, communities, installations, and States in accordance with authorization documents. Commanders and State AGs determine the need for IG supporting staff. The command or State IG is a member of the personal staff of the commander or State AG.

file. The request for anonymity will be prominently stated and the use of the person's name will be minimized in any file or record created by the IG. This is most easily done by referring to the person as "complainant," "witness," or similar title, instead of by name.

c. The intent behind this emphasis on confidentiality is to protect individual privacy, maintain confidence in the IG system, and minimize the risk of reprisal. It is a key component of the IG system because it encourages voluntary cooperation and willingness to ask for help or to present a complaint for resolution.

d. While protecting confidentiality is a priority concern for the IG, it cannot be absolutely guaranteed. IGs will not unconditionally promise confidentiality. It may be breached if required by law or regulation, or by direction of The Inspector General. Persons who request anonymity or who express a concern about confidentiality will be told this.

Chapter 2 Inspector General Personnel Procedures and Training

Section I Personnel Procedures

2-1. IG positions

a. IG positions are designated in approved modification tables of organization equipment (MTOEs) and tables of distribution and allowances (TDAs). Authority to establish IG positions in TDAs has been delegated to commanders reporting directly to HQDA (AR 614-100). TIG provides guidance and reviews manpower standards and staffing guides regarding minimum manpower requirements for IG activities.

b. TIG approves or disapproves nominations of all active component and full-time USAR soldiers (staff sergeant (promotable) (SSG(P) and above) to be assigned to IG duties, and part-time USAR and full-time ARNG commissioned officers to be assigned as detailed IGs. The Commander in Chief (CINC), Forces Command (FORSCOM), the CINC, U.S. Army Europe and Seventh Army (USAREUR), and the commanders, U.S. Army South (USARSO), U.S. Army Pacific Command (USARPAC) and Eighth U.S. Army (EUSA) approve nominations of part-time warrant officers (WOs) and enlisted soldiers to be assigned as assistant IGs and commissioned officers to be assigned as acting IGs in subordinate USAR units. TIG establishes the prerequisites for service as an IG.

c. A soldier serving in an IG position may not be removed by the commander or State AG without TIG's concurrence, unless the soldier is removed for cause. TIG will be notified immediately of any removal for cause. TIG may remove any active duty soldier, full-time and part-time USAR soldier, and full-time ARNG commissioned officer from service as an IG.

2-2. IG categories

Persons are assigned as IGs in one of three categories: detailed IGs, assistant IGs, and acting IGs. Persons serving in each category are referred to by the title Inspector General.

a. Detailed IGs are commissioned officers selected for detail as a continuation of their development for future command and staff assignments. They must be qualified for detail under AR 614-100.

(1) Command and State IGs must be detailed IGs. The commander or State IG is a personal staff officer of the commander or State AG. The IG works directly for the commander or State AG, but operates with, contributes support to, and obtains support from IGs Army-wide.

(2) Detailed IGs may receive and process requests for assistance, conduct inquiries, investigations and inspections, and administer oaths. They will wear the IG insignia.

(3) Detailed IGs will attend the IG course before performing IG functions. Exceptions require TIG approval. See paragraph

2-9b regarding reserve component soldiers and persons with a previous assignment as an IG.

(4) Detailed IGs will be assigned to MTOE or TDA positions.

b. Assistant IGs are WOs, enlisted soldiers (SSG(P) and above), or civilian employees (GS-6 and above) who perform IG functions on the staff of a command or State IG.

(1) An assistant IG may receive and process requests for assistance, conduct IG inquiries, help conduct IG investigations (see para 2-2b(2) and 8-1b), and perform administrative duties.

(2) Assistant IGs may not administer oaths.

(3) Assistant IGs will attend the IG course before performing IG functions. Exceptions require TIG approval. See paragraph 2-9b regarding reserve component soldiers and persons with a previous assignment as an IG.

(4) Assistant IGs will be assigned to MTOE or TDA positions.

(5) Enlisted soldiers serving as assistant IGs will wear IG insignia. Warrant officers serving as assistant IGs will wear warrant officer insignia (AR 670-1).

(6) Soldiers and civilian employees who serve in administrative and support positions (such as, administrative assistants, secretaries, drivers, computer operators, clerks, typists, and so forth) on the staff of a command or State IG are not assistant IGs.

(7) Commissioned officers, WOs, enlisted soldiers, and civilian employees may be assigned as temporary assistant IGs to augment an IG inspection or investigation team. AR 570-4 provides general guidance on manpower management. Further guidance on assignments and details can be found in AR 614-100 on commissioned officers and WOs, AR 600-200 on enlisted soldiers, and AR 140-10 on Reserve Components. Civilians are managed through the local Civilian Personnel Office. The term of service of a temporary assistant IG is as specified in the appropriate authorizing regulation.

(a) Soldiers assigned as temporary assistant IGs who perform IG functions over 90 days must be approved by TIG or by delegated authority in paragraph 2-1b.

(b) The command or State IG will ensure that persons selected to serve as temporary assistant IGs receive appropriate training before performing IG functions. Temporary assistant IGs who perform IG functions over 90 days will attend the IG functions portion of the IG course. Exceptions require TIG approval. See paragraph 2-9b regarding persons with a previous assignment as an IG.

(c) Temporary assistant IGs may not administer oaths.

(d) Commissioned officers and enlisted soldiers assigned as temporary assistant IGs will wear IG insignia.

(e) Temporary assistant IGs will work under the direct supervision of a detailed IG.

c. Acting IGs are commissioned officers appointed to additional duty by a commander or State AG authorized a detailed IG. Commissioned officers selected for this duty will be approved by TIG. The CINC, FORSCOM, the CINC, USAREUR, and the commanders, USARSO, USARPAC, and EUSA are delegated approval authority for appointment of commissioned officers as acting IGs in subordinate USAR units. The State AG approves appointment of commissioned officers as acting IGs in the ARNG. If no commissioned officer is available, a request for exception may be submitted to TIG. The request must demonstrate the need for an acting IG, must explain why no commissioned officer is available, and must describe the qualifications of the nominee.

(1) An acting IG's only IG duty is to receive and process DA Form 1559-R (Inspector General Action Request (IGAR)) (para 7-12). DA Form 1559-R will be locally reproduced on 8½ by 11-inch paper. A copy for reproduction purposes is located at the back of this regulation. Acting IGs will not conduct investigations, serve on IG inspection teams, or perform duties in the office of a detailed IG. Acting IGs may not administer oaths.

(2) Acting IGs will not wear IG insignia.

(3) Acting IGs will be trained and supervised by a detailed IG.

(4) Commissioned officers in the chain of command or those who routinely assume duties in the chain of command will not be designated acting IGs. For example, a battalion executive officer

base during the semiannual update if they are serving at the time of the update and are approved to serve for longer than 90 days.

2-6. IG oath

a. Persons serving in any position in an IG office (including administrative positions), and persons serving as acting IGs will take the IG oath (figs 2-1, 2-2, and 2-3). The commander or State AG, or an authorized representative, will administer the IG oath.

b. The IG oath, while primarily descriptive of the position of a detailed IG, is nevertheless appropriate for all personnel serving as an acting IG or in an IG office. Everyone serving in an IG office contributes to the effectiveness of the IG system, manages sensitive information, and represents the IG functions to other persons and agencies. The IG oath reminds all IG personnel of the special trust and confidence inherent in their position.

c. Personnel who have sworn to or affirmed the IG oath will be issued DA Form 5097, (Inspector General Oath) (fig 2-1), or DA Form 5097-1 (Inspector General Oath Certificate (Non-IG)) (fig 2-2), or DA Form 5097-2 (Inspector General Oath Certificate (Acting IG)) (fig 2-3), as appropriate. DA Forms 5097, 5097-1, and 5097-2 are available through normal publications supply channels.

2-7. IG duty restrictions

a. Detailed IGs, assistant IGs, and temporary assistant IGs will not—

(1) Be assigned to any non-IG assistance or evaluation functions, such as maintenance assistance and inspection teams, command logistics evaluation and review teams, Reserve Component (RC) evaluation teams, Army Training and Evaluation Program (ARTEP) teams, command or staff inspection teams, or similar teams.

(2) Be appointed as investigating officers under article 32 or article 138, UCMJ, AR 15-6, or other regulation providing for the appointment of investigating officers, members of administrative separation boards, or members of courts-martial.

(3) Be assigned duties that may subsequently disqualify them from making or assisting in impartial inquiries or investigations into any function or activity of the command to which they are assigned. Examples include staff duty officer or noncommissioned officer (NCO), line of duty investigator, casualty assistance officer or NCO, member of interior guard force, member of an awards board, and funeral detail.

b. The restrictions in this paragraph are not intended to exclude IGs from performing management functions normal for offices and staff office chiefs, such as participating in the budget process and contributing to goal setting for the command. Also, IGs may serve on DA centralized promotion boards.

2-8. Retiree mobilization program

TIG is the approving authority for retired commissioned officers (under 60 years of age) nominated for preassignment orders to IG positions. The Army Reserve Personnel Center (ARPERCEN) has overall responsibility for administering the program. ARPERCEN will approve officers to serve as IGs in this program who can be identified as having an Additional Skill Identifier (ASI) of 5N (Inspector General). All other officers will be approved by TIG. Nominations will be forwarded by ARPERCEN per paragraph 2-3c. Individuals or IGs who desire to volunteer for or who wish to identify other individuals for possible participation in the program may contact Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-MOP, 9700 Page Boulevard, St. Louis, MO 63132-5260.

Section II

Training

2-9. IG course

a. TIG conducts a training course to prepare persons selected as detailed IGs and assistant IGs to perform IG functions. Currently, the IG course is 6 weeks long. The first 2 weeks provide comprehensive instruction on the basic IG functions of assistance,

investigations, and inspections. The last 4 weeks cover Army systems, procedures, and programs, plus application of the IG functions within the United States Army.

b. Completion of the IG course is a prerequisite for detailed IGs and assistant IGs before performing IG functions. Reserve component soldiers do not have to attend all 6 weeks of the course at one time. However, they will attend the first 2 weeks as soon as possible after being appointed an IG. Persons who attended the IG course together with a previous IG assignment may request an exception to attend only the 2-week IG functions part of the course instead of the full 6-week program. The request will be submitted telephonically to the Training Division, USAIGA, commercial (703) 355-2585, or AUTOVON 345-2585.

c. Before 1 July of each year, the Training Division, USAIGA will distribute a schedule of IG courses for the next fiscal year. Requests for quotas for the IG course are approved by HQDA (SAIG-TR). Quota requests will be coordinated as follows:

(1) Requests for course quotas for active duty soldiers and DA civilians will be submitted by IG offices or by PERSCOM to the Commander, U.S. Army Inspector General Agency, ATTN: SAIG-TR, Casey Building, Room 112, Humphreys Engineer Center, Fort Belvoir, VA 22060-5581.

(2) Requests for course quotas for ARNG personnel will be submitted by the State AG (designated representative) to the ARNG Operating Activity Center, ATTN: ARNG-ARO-ME, Building E6814, Edgewood Area, Aberdeen Proving Ground, MD 21010-5401, or to the address in (1) above.

(3) Nominations for course attendance by USAR personnel will be submitted through the appropriate continental United States Army (CONUSA) commander to the CINC, FORSCOM, ATTN: FCJ3-TS, Fort McPherson, GA 30330-6000. FORSCOM will coordinate with SAIG-TR for a specific class quota for course attendance. Nominations for course attendance by mobilization augmentee IGs will be submitted through the appropriate CONUSA, MACOM, or installation commander to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-MSB-IM, St. Louis, MO 63132-5260. Once a nomination is approved, a request for a quota will be submitted by ARPERCEN to the Commander, U.S. Army Inspector General Agency, ATTN: SAIG-TR, Casey Building, Room 112, Humphreys Engineer Center, Fort Belvoir, VA 22060-5581.

d. Funding for attendance at the IG course is provided through a variety of sources. Coordination for and questions pertaining to funding for a specific student should be addressed with SAIG-TR when requesting a quota for the course.

e. Award of the ASI 5N to commissioned officers is authorized upon successful completion of the course. Award of the ASI will be made by the officer's local military personnel office (MLPO) based upon receipt of a course completion letter prepared by the Training Division, USAIGA. There is no IG ASI for warrant officers or noncommissioned officers.

2-10. IG Worldwide Network (IGNET) training

a. IGs will receive IGNET familiarization training in office automation, electronic mail, and data base software during the course.

b. Training in site administration is also provided for select personnel by the Information and Resource Management Division, USAIGA.

c. Following site installation and initial training, each IGNET site will develop a program to train personnel in IGNET applications.

2-11. Nuclear weapons and chemical surety technical

Inspector qualification training

a. Officers, WOs, and civilian employees assigned to conduct technical inspections will undergo a four phase training program:

- (1) Phase I: IG Course.
- (2) Phase II: TIG's Technical Inspectors Orientation Course.
- (3) Phase III: A technical training course conducted by either the Ordnance Missile and Munitions Center and School, Redstone Arsenal, AL; the Field Artillery Center and School, Fort Sill, OK;

(4) With the knowledge and approval of the agency commander concerned, any investigative agency may be used in support of an investigation being conducted by another.

(5) All allegations of impropriety made against U.S. Army general officers or Army civilians of equivalent rank, wherever assigned, will be reported to the Department of the Army and referred to TIG for appropriate action. In cases involving criminal offenses, TIG will forward the criminal aspects of the case to the Commanding General, USACIDC, for investigation. Allegations against other U.S. Army personnel who occupy key positions may be referred to TIG on a selective basis.

5. This MOU supersedes the Memorandum of Understanding between the Inspector General, the Commander, USACIDC, and the DCSPER, dated August 1983, and published in AR 20-1, dated 16 September 1986.

6. This MOU will be effective upon signature by all parties and will be disseminated through Inspector General technical channels, USACIDC command channels, and ODCSOPS law enforcement channels.

(Signed Eugene R. Cromartie)

EUGENE R. CROMARTIE
Major General, USA
Commander, CIDC
(10 March 1988)

(Signed H. Norman Schwartzkopf)

H. NORMAN SCHWARTZKOPF
Lieutenant General, GS
Deputy Chief of Staff for
Operations and Plans
(17 March 1988)

EXHIBIT 2
DATE 2-6-95
SB 115, SB 136

(Signed Henry Doctor, Jr.)

HENRY DOCTOR, JR.
Lieutenant General, USA
The Inspector General
(24 March 1988)

Figure 3-1. Memorandum of Understanding—Continued

Chapter 4 The Inspector General Planning and Analysis Function

4-1. General

a. The principal purpose of planning and analysis is to ensure limited IG inspection resources are employed in areas that provide the highest payoff to the commander or State AG and the Army.

b. The planning and analysis function is a continuous systematic process of collecting, reviewing and integrating information from all available sources. Its purpose is to identify possible systemic problems affecting mission accomplishment and attainment of Army goals.

c. The products of these analyses are used to identify and prioritize subjects for IG inspections. This is the initial step in development of the IG inspection program. The analysis process also provides information to answer the commander's questions; to help commanders and staff implement inspection recommendations; to help IGs identify trends in their command; and to teach commanders and staff how to analyze and inspect their areas. Additionally, these analyses aid the IG by providing valuable information to use in resolving IG inquiries.

4-2. Procedures for IG planning and analysis

a. Planning and analysis responsibilities will be identified and assigned to a particular individual or organizational element in each IG organization.

b. IGs will develop the IG inspection program as a component of the overall organizational inspection program in accordance with the commander's or State AG's guidance.

c. A deliberate process will be developed within each IG organization to identify, evaluate, and prioritize potential inspections for inclusion in the IG inspection program. The Planning and Analysis Division, USAIGA, (HQDA(SAIG-PA), WASH DC 20310-1718), is available to provide guidance and assistance for the inspection identification process.

Chapter 5 The Inspector General Inspection Function

5-1. General

a. AR 1-201, prescribes policy and responsibilities for conduct of inspections in Army organizations. IG inspections are an integrated element of a commander's and State AG's organizational inspection program.

b. This chapter provides general policy guidance for IG inspections. It is to be used with TB IG 1, which gives detailed guidance for planning, coordinating and conducting IG inspections.

c. IG technical inspections of nuclear and chemical capable units are addressed in chapter 6.

d. There are occasions during IG inspections when an IG must protect the confidentiality of persons. For example, confidentiality may be required when a person identifies organizational deficiencies in response to IG questions asked during an inspection. An IG conducting an inspection who receives an allegation or request for assistance must normally protect the confidentiality of the person making the allegation or request. (See para 1-15.)

5-2. IG Inspection policy

a. There are three types of IG inspections—special, followup, and general.

(1) The IG special inspections are the preferred type for IGs to conduct. IG special inspections orient on systemic issues to—

- (a) Focus on issues or functions, not units.
- (b) Identify the root cause(s) of problems.
- (c) Pursue systemic issues affecting the command, especially those beyond subordinate commanders' authority to fix.
- (d) Teach systems, processes, and procedures.
- (e) Identify responsibility for corrective action.
- (f) Spread innovative ideas by publicizing them.

(2) The IG followup inspection is an essential component of all IG inspections.

7-2. Definitions

Significant assistance function terms—IG assistance, IGAR, IG inquiry, requester—are defined in the glossary.

7-3. Submitting an IGAR

a. Anyone may submit a complaint, allegation, or request for help to any Army IG concerning matters of DA interest. Soldiers and DA civilians should be afforded the opportunity to present complaints, allegations, or requests for help in person to an IG quarterly, when practicable. Permanent notices, substantially, as shown in figures 7-1 and 7-2, will be posted on bulletin boards at DA activities.

b. IGs will encourage soldiers to first discuss complaints, allegations, or requests for help with their commander or chain of command, as provided in AR 600-20. If a soldier does not wish to do so, the IG will accept the IGAR.

7-4. Receiving an IGAR

a. The DA Form 1559-R is the control document for each IGAR. All materials gathered during resolution of the IGAR will be filed with the form. A copy of DA Form 1559-R is located at the back of this regulation and may be reproduced on 8½- by 11-inch paper.

b. An IGAR may be submitted in any form. Completion of a DA Form 1559-R by the requester is the preferred method for submission. The IG receiving the IGAR will fill in the DA Form 1559-R when the IGAR is submitted by any other means.

c. An IG receiving an IGAR is acting for the commander or State AG. In many cases, it is essential for the IG and the commander or State AG to protect confidentiality of the requester. (See para 1-14.)

d. The IG will analyze each IGAR upon receipt to determine the action needed to resolve it.

(1) The IG may refer the requester to the chain of command or an appropriate local staff agency for action. For example, a soldier with a pay complaint who has not been to the local finance office may be referred to that office for resolution of the complaint. Paragraph 7-6 provides guidance for referral of IGARs related to soldier nonsupport of family members, soldier indebtedness, and soldier equal opportunity complaints. The IG will followup this kind of referral to ensure the requester receives the needed assistance.

(2) The IG may conduct an IG inquiry to resolve the IGAR. (See para 7-5.)

(3) In certain cases, the IG may be required to conduct an IG investigation to resolve the IGAR. (See chap 8.)

(4) If appropriate, the IG may refer the IGAR to another IG at any organizational level for action. The referring IG will send the original records of the IGAR to the IG taking the action. All referrals to HQDA will be sent to Assistance Division, USAIGA.

(5) When the IGAR concerns an activity or program of another Service, the IG should refer the IGAR to the local IG of that Service. The IG will provide information copies of the referral to the MACOM and the Assistance Division, USAIGA. If an IGAR cannot be resolved locally through referral to the other Service IG, it will be forwarded to Assistance Division, USAIGA.

(6) The IG will inform the requester of redress available through other means. Paragraphs 7-7 and 7-8 list some specific types of redress available. IGs will limit their assistance in these cases to a review, after completion of action on the request for redress, of whether due process was afforded the requester.

e. The requester may withdraw the IGAR. Withdrawal is a voluntary action. IGs will not suggest withdrawal or require the requester to submit any statement of acknowledgment of withdrawal. When an IGAR is withdrawn, the commander, State AG or detailed IG may decide to continue to process some or all of the IGAR to address deficiencies in Army procedures or systems. All IGs must analyze the substance of complaints and requests for assistance from contractors involved in commercial activities, procurement activities, or contracting to determine if they are

proper for IG inquiry. Coordination with the supporting judge advocate, general counsel, or the Legal Advisor, USAIGA is recommended.

7-5. Conducting an IG Inquiry

a. An IG inquiry is the most common means IGs use to gather information needed to respond to a requester. It is an informal fact finding process that may be as simple as making a single telephone call. If statements are taken, they normally are not recorded or sworn. If reduced to writing, they are normally summarized. An IG inquiry must be timely and thorough. It must provide the basis for responding to the IGAR and for correcting underlying deficiencies in Army procedures and systems. The IGAR file must contain information that supports conclusions reached and the response to the requester.

b. The IG responsible for processing the IGAR determines the best way to conduct the IG inquiry. Telephone calls, visits, interviews, and coordination of actions taken by various agencies are some of the more common IG inquiry actions.

c. An appropriate format for recording the results of an IG inquiry is to list each request or allegation, provide a discussion of the facts and evidence, and state a conclusion. Allegations must be worded carefully. A substantiated allegation should represent a violation of Army policy or standards, or a deficiency in Army procedures or systems. In those instances where an allegation is substantiated, but no violation of Army policy or standards, or no deficiency in procedures or systems has been identified, the IGAR file will reflect that the allegation was substantiated and will explain why no violation occurred.

d. When an IG interviews a person, the IG may record impressions of the person's attitude, sincerity and veracity. The IG will enter these in the IGAR file and will clearly indicate they are impressions.

7-6. Actions on certain types of IGARs

a. *Soldier nonsupport of family members or private indebtedness.* When an IGAR concerns these matters, the IG should first provide assistance to ensure the immediate needs of the family are met. Notice will be sent through command channels to the soldier's commander. AR 608-99 prescribes actions for the commander to take for nonsupport cases; AR 600-15 prescribes commander's action for private indebtedness cases. An IG becoming involved with these matters will determine if the requester has forwarded the complaint through command channels to the soldier's commander. If not, the IG should offer assistance in formulating and properly routing the complaint. If the requester has already initiated appropriate action, the IG should continue assistance only if the responsible commander has not responded satisfactorily. In that case, the matter should be handled in IG channels, but only to the extent necessary to ascertain if the responsible commander fulfilled obligations required by law or regulation. PERSCOM (Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PDO-IP, 200 Stovall St., Alexandria, VA 22332-0400) has established an office to assist in these cases. PERSCOM will provide policy interpretations and guidance on unresolved or complex cases.

b. *Soldier equal opportunity complaints.* The Equal Employment Opportunity (EEO) advisor, under provisions of AR 600-20, the IG, or an investigating officer appointed under AR 15-6 may address EEO complaints made by soldiers. Who will address the complaint and how is a command decision (ARNG personnel see para 7-14b). However, when an EEO complaint is forwarded for inquiry or investigation through IG channels, any response must be transmitted using the same channels. When the requester seeks redress for past alleged discriminatory practices that have become part of official Army records, the IG should encourage the requester to seek redress through appeals procedures provided for by law or Army regulations pertaining to the particular adverse action. Examples include OER or EER appeals, courts-martial, and other actions listed in paragraph 7-7.

Commands and activities with an acting inspector general under the supervision of Assistance Division, USAIGA for the DAIG:

- U.S. Army Finance and Accounting Center
- U.S. Army Element, SHAPE
- U.S. Army Element, AFCEM
- U.S. Army Element, AFNORTH
- U.S. Army Element, LANDSOUTHEAST
- U.S. Army Element, AFSOUTH
- 97th Signal Battalion
- The Judge Advocate General's School
- Community & Family Support Center

Figure 7-3. Acting Inspectors general

Chapter 8

The Inspector General Investigation Function

8-1. General

a. Significant IG investigation function terms—IG investigation, IG inquiry, directing authority, directive—are in the glossary.

b. Only detailed IGs may conduct an investigation. An assistant IG may help. An acting IG may only provide limited administrative support.

c. IGs seeking advice on any aspect of IG investigations or investigative IG inquiries, should contact the Investigations Division, USAIGA. If a legal issue is involved, IGs should contact the USAIGA Legal Advisor.

8-2. Duties of IG investigators

a. IG investigators—

(1) Conduct IG investigations in accordance with procedures in this regulation and TB IG 4.

(2) Make or obtain conscious decisions on disposition of all allegations: IGs never discard an allegation solely because it is anonymous, appears frivolous, unimportant, or not relevant to matters under investigation, or is subsequently withdrawn by the complainant.

(3) Obtain evidence sufficient to determine that an allegation is either substantiated or not substantiated. The standard for reaching this conclusion is that the preponderance of evidence, as viewed by a reasonable person, supports it. Preponderance is defined as "superiority of weight." In the rare instance where an allegation can be neither substantiated nor refuted, so state. Word allegations carefully; a substantiated allegation should always represent impropriety.

(4) Include in the report of investigation (ROI) a complete, objective and impartial presentation of all pertinent evidence gathered during the investigation.

(5) Never recommend adverse action against an individual. IGs are fact finders. A ROI presents the facts to the directing authority; it will not contain recommendations for adverse action against an individual.

(6) Report systemic problems discovered during an investigation to the appropriate authority and follow up to ensure corrective action is taken.

b. In all investigative activities, IGs will be sensitive to actual and potential concerns that people have about keeping both the fact and extent of their involvement confidential. (See paras 1-15 and 3-4b.)

8-3. Jurisdiction

IGs may investigate or conduct investigative IG inquiries in alleged—

(1) Noncriminal violations of policy, regulation or law.

(2) Mismanagement, unethical behavior, or misconduct which, if true, may not violate any policy, regulation, or law but is of concern to the directing authority.

b. IGs should not normally investigate or conduct investigative IG inquiries when—

(1) The alleged impropriety, if true, constitutes criminal misconduct. Criminal investigators focus on criminal activity; IGs do not. Exceptions should be rare, and should be preceded by consultation with appropriate legal and USACIDC officials. (See the MOU at fig 3-1.)

(2) Substantiation of allegations is likely to result in adverse action against individuals. (See para 3-3.)

(3) The Army has established means of redress. (See paras 7-7 and 7-8.)

(4) The allegations are against a member of the Judge Advocate Legal Services. Such allegations will be referred through the USAIGA Legal Advisor to The Judge Advocate General (TJAG) for disposition per AR 27-1.

c. When IGs need more information to determine disposition of allegations or issues, they may conduct an IG inquiry or IG investigation to develop the situation. If it becomes apparent that further IG involvement is inappropriate, close or recommend closure of the IG inquiry or IG investigation in favor of a better course of action (that is, investigate per AR 15-6).

d. The SA has authorized TIG to investigate all Army activities. Only the SA, USofA, CSA, VCSA, and TIG may direct conduct of DAIG investigations. Heads of HQDA agencies, commanders, and State AGs may request TIG conduct an investigation, but are not authorized to direct TIG to do so.

e. Commanders whose staffs include a detailed IG may direct IG investigations into activities within their command. Detailed IGs are authorized to investigate within their organizations and activities, as specified by their directing authority.

f. State AGs whose states have detailed IGs may direct IG investigation into Federally-related Army activities within their states. Before directing an IG investigation into a Federally-related Air Force activity, a State AG should coordinate with the NGB IG and Investigations Division, USAIGA.

g. An IG investigation of an allegation concerning a command or its commander normally will be conducted by the next higher command, except that an allegation involving a general officer will be handled per paragraph 8-3i.

h. Allegations against IGs will be forwarded to the next higher command IG for determination of action to be taken. An information copy of the circumstances and results will be provided to the Investigations Division, USAIGA, as soon as practicable.

i. Investigations of allegations against general officers and senior civilian employees of the Army will be conducted as follows:

(1) Only the SA, USofA, CSA, VCSA, and TIG may authorize or direct IG investigations of allegations against general officers, members of the SES, and other civilian employees of comparable grade or position.

(2) Forward all allegations, including criminal allegations, against general officers and senior civilians directly to the Investigations Division, USAIGA, by a rapid but confidential means, within 1 week of receipt. Do not inform intermediate commanders or their headquarters. TIG will determine or recommend disposition of the allegations.

INSPECTOR GENERAL ACTION REQUEST

For use of this form, see AR 20-1; the proponent agency is the OIG

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: Title 10, USC, Section 3039.

PRINCIPAL PURPOSE: To secure sufficient information to make inquiry into the matters presented and to provide a response to the requester(s) and/or take action to correct deficiencies.

ROUTINE USES: Information is used for official purposes within the Department of Defense; to answer complaints or respond to requests for assistance, advice or information; by Members of Congress and other Government agencies when determined by The Inspector General to be in the best interest of the Army; and in certain cases in trial by court martial other military matters as authorized by the Uniform Code of Military Justice.

DISCLOSURE OF THE SOCIAL SECURITY NUMBER AND OTHER PERSONAL INFORMATION IS VOLUNTARY. HOWEVER, FAILURE TO PROVIDE COMPLETE INFORMATION MAY HINDER PROPER IDENTIFICATION OF THE REQUESTER, ACCOMPLISHMENT OF THE REQUESTED ACTION(S) AND RESPONSE TO THE REQUESTER.

LAST NAME - FIRST NAME - MIDDLE INITIAL

GRADE

SSN

DUTY TELEPHONE

COMPLETE PRESENT MILITARY ADDRESS (If no military address, state current civilian address, including Zip Code.)

SPECIFIC ACTION REQUESTED

INFORMATION PERTAINING TO THIS REQUEST (Use additional sheets if necessary; list enclosures if applicable.)

This information is submitted for the basic purpose of requesting assistance, correcting injustices affecting individual, or eliminating conditions considered detrimental to the efficiency or reputation of the Army. I fully understand that I may be held accountable for any statements which are proved to be knowingly untruthful.

SIGNATURE

DATE

the union representative to be present at the interview regardless of the employee's status in the investigation.

(3) The union representative serves only as an advisor to the employee at the interview and may not ask or answer questions for the employee. The union representative's presence is in addition to any right the employee may have to a lawyer.

(4) If the union, having been given the opportunity to be represented, does not send a representative for the employee, the interview may proceed as scheduled.

8-6. Unfavorable Information

During an IG investigation, unfavorable information (see glossary) obtained about an individual may result in an adverse comment in the ROI. If the individual was not informed of the unfavorable information during the IG investigation, the IG will advise the person concerned, orally or in writing, of its substance before the IG investigation is completed. The IG will provide the person an opportunity to comment on the unfavorable information. The comment may be—

- a. Presented orally, in person, sworn or unsworn.
- b. The testimony of reasonably available witnesses the person desires be heard.
- c. Written statements, preferably sworn, made by the person or others who wish to make a statement on that person's behalf.
- d. Any other evidence, documentary or physical, the person wishes to present.

8-7. Reports of investigation

a. *Preparation.* IGs will prepare a separate written report for each IG investigation. Formats are in TB IG 4. Complete the ROI as soon as practicable after completing the investigation.

b. *Processing.*

(1) The command or State IG will—

(a) Review the ROI and forward the report to the supporting judge advocate or command counsel for legal review.

(b) Submit the report with recommendations to the directing authority. IGs do not recommend policy or adverse action against individuals.

(2) The directing authority will—

(a) Approve or disapprove the ROI in its entirety, or approve it in part. Approval or disapproval will be indicated on the ROI itself over the signature of the directing authority. Commanders and State AGs may delegate approval and disapproval authority during their temporary absence. General officer commanders may permanently delegate approval and disapproval authority to a general officer deputy commander or a general officer chief of staff.

(b) Take action on the approved portions that are within his or her authority and responsibility. A record of the action taken will be made a part of the original report and all copies. See paragraph 3-3 for restrictions concerning the use of an IG ROI as a basis for adverse action.

(3) A ROI or any portion of it that requires action at levels above that of the directing authority will be forwarded, with recommendations, through IG channels to the next higher commander in the chain of command. Each higher commander will indicate approval or disapproval and take appropriate action on matters within his or her authority. Remaining matters will be forwarded through IG channels, with appropriate recommendations, to the next higher commander.

(4) When the IG investigation has been directed by higher authority, the immediate commander of the IG who conducted it will indicate concurrence or nonconcurrence in the investigation's conclusions. The ROI will be forwarded through IG channels to the directing authority. Each intermediate commander will indicate concurrence or nonconcurrence with the ROI and will forward the report, with appropriate remarks and recommendations, through IG channels to the next higher commander.

8-8. Recording Investigations in IGNET

Reports of investigation will be entered into the IGNET data base using the procedures defined in paragraph 7-11 and the IGNET User's Manual (ADSM 18-G04-GAA-CVT-UM).

Chapter 9

Information Management

EXHIBIT 2
DATE 2-6-95
SB 115, SB 136

9-1. General

The Inspector General Worldwide Network (IGNET) is an information management system designed to support data collection, analysis, communication, and administrative requirements of IGs. The IGNET data base uses both manual and automated techniques to record selected data generated as a result of IG activities. This data is processed to produce management information products at each IG office.

9-2. Use of the IGNET

The IGNET supports the effective and efficient execution of the IG mission by providing IGs with—

- a. Common office automation capabilities for accomplishing correspondence and electronic communications tasks.
- b. An automated means to collect, record, and analyze data, and produce information products.

9-3. The capabilities of IGNET

- a. Office automation:
 - (1) Word processor.
 - (2) Spreadsheet.
 - (3) Electronic Mail.
- b. Inspector general data base applications:
 - (1) Inspection.
 - (2) Assistance/investigations.
 - (3) Information gathering system (IGS).
 - (4) Data transfer.
 - (5) Inspector General Personnel System (IGPERS).
- c. Technical Inspection Division Management Information System (TIDMIS).
- d. Training Division Management Information System (TRDMIS).
- e. These systems and subsystems are described in detail, with operating instructions, in the IGNET User Manual (ADSM 18-G04-GAA-CVTUM) or appropriate subsystem manual.

9-4. IGNET operations

All IG offices are required to perform two major IGNET operations.

a. The IG offices will enter all required data from inspection findings, investigations and assistance cases (Inspector General Action Request System (IGARS)) into the IGNET data base. IG offices without IGNET will code and submit that information to a site designated by their MACOM. NGB will designate the site for State IGs.

b. The IG offices will transfer their inspection findings and assistance case (IGARS) to their higher commands each quarter. MACOMs and NGB will consolidate this data. MACOMs, NGB and Army Staff field operating agencies (ARSTAF FOAs) will transfer the consolidated data to Information Resource Management Division, (IRMD), USAIGA, by the 45th calendar day after each fiscal quarter.

9-5. Security

a. The security and protection of sensitive IGNET data is essential. The security of IGNET includes physical security of automatic data processing equipment, data security, and information security.

b. Physical security is mainly concerned with ensuring that—

- (1) The equipment is secured in IG offices only.
- (2) Access to the equipment is limited to IGs.
- (3) Access to software, hardware, data and information is limited to IGs or personnel supervised by IGs.
- (4) AR 380-5 provisions are met.

c. Data and information security are as follows:

- (1) AR 380-5 is the governing regulation for security.
- (2) Only IG offices will have access to the IGNET system. Only designated IG personnel within these offices shall be allowed access to IG automated records or data.

(3) IGs who receive allegations against general officers and senior civilians may tell their commanders the general nature of the allegations and the identity of the person(s) against whom the allegations were made. Do not reveal either the source of the allegations or the specific nature of the allegations. (See para 1-15.)

(4) Address questions to the Chief, Investigations Division, USAIGA (HQDA (SAIG-IN), WASH DC 20310-1746), or the Legal Advisor, USAIGA (HQDA (SAIG-ZXL), WASH DC 20310-1714).

j. Forward allegations against PM/PEOs who are general officers or DA civilian employees of the SES or equivalent grade, directly to Investigations Division, USAIGA in accordance with paragraph 8-3i. If allegations are made against the PM/PEO staff, the supporting MACOM or MSC IG will normally conduct the IG inquiry or IG investigation under a directive from the MACOM or MSC commander. The PM/PEO will be told the general nature of the allegation and the identity of the individual against whom the allegation has been made. The results of the IG inquiry or IG investigation will be briefed to the PM/PEO. Final approval authority for the ROI remains with the MACOM or MSC commander. The MACOM or MSC will coordinate with the PM/PEO before final approval.

k. The directing authority may terminate at any time an IG investigation that he or she directed. When this occurs, the IG conducting it will file in the IG office an abbreviated report using the applicable parts of the ROI format per TB IG 4.

8-4. Conduct of IG investigations

a. IG investigations will be limited to the matters approved by the directing authority per TB IG 4. Expanding the scope of an IG investigation requires approval of the directing authority. If the IG discovers matters requiring investigation, which are totally unrelated to an ongoing IG investigation, the IG will report them to the directing authority so an appropriate investigation can be initiated.

b. In most IG investigations, evidence will be developed through documents and interviews of witnesses per TB IG 4. IGs always seek the best available evidence. The best evidence from individuals is sworn and recorded testimony by persons with direct knowledge. Evidence of a lesser quality, such as, memoranda of conversations, handwritten notes, unsworn statements, second-hand information (hearsay), is also acceptable.

c. IGs will use interview guides in TB IG 4 when conducting interviews.

d. Persons who provide testimony in an IG investigation will normally not be allowed to record their testimony by tape or any other means. After the IG investigation and action by the directing authority are completed, individuals may obtain transcribed copies of their own testimony by following the procedures in paragraph 3-5a(2)(b).

e. To protect confidentiality of IG investigations and the rights, privacy and reputations of all people involved in them, IGs, during notifications and interviews, will ask people with whom they are talking not to reveal matters under investigation or to discuss them with anyone, except their own lawyer if they consult one, without permission of the investigating officer(s). Inspectors general will not withhold permission for defense counsel to interview witnesses about matters under investigation.

8-5. Discussion of rights

a. The appropriate rights warning for persons interviewed during an IG investigation varies with their employment status. Consult TB IG 4 for the appropriate interview guide and warning to use.

b. A witness is a person who saw, heard, knows, or has something relevant to the issues being investigated and who is not a subject or suspect. A witness has the right to protection of IG confidentiality (see para. 1-15) and protection against restrictions on or reprisal for lawfully communicating with an IG. (see para 1-14). (Also see para 8-5e.)

c. A subject is a person against whom a non-criminal allegation has been made. A subject has the right to notice of the allegation

and an opportunity to respond to it. Although subjects do not have the same right to a lawyer that suspects do, they may choose to talk with a lawyer before the interview. While subjects do not have the right to have a lawyer present during interviews, IGs should normally grant such requests. If a subject is accompanied by a lawyer at the interview, the lawyer's role is that of an advisor. The lawyer may not ask or answer questions for the subject, but the subject may confer privately with the lawyer at any time during the interview. (See para 8-5e.)

d. A suspect is a person against whom a criminal allegation has been made. A person may also become a suspect as a result of incriminating information that arises during an investigation or interview. Suspects have the right to be informed of their rights in accordance with DA Form 3881 (Rights Warning Procedure Waiver Certificate). When a suspect does not waive his or her rights because the suspect wants a lawyer, the IG will not interview the suspect further until the suspect's lawyer is present, or unless the supporting judge advocate, command counsel, or USAIGA Legal Advisor determines the interview can continue without the suspect's lawyer. When a suspect does not waive his or her rights because the suspect does not want to be questioned or say anything, the IG will not interview the suspect further unless the supporting judge advocate, command counsel or USAIGA Legal Advisor determines the interview can continue. If the suspect is willing to discuss the matter under investigation and elects to have a lawyer present during questioning, the lawyer's role is that of an advisor. The lawyer may not ask or answer questions for the suspect, but the suspect may confer privately with the lawyer at any time during the questioning.

e. Persons interviewed as witnesses or subjects in an IG investigation also have the right not to incriminate themselves. However, a witness or subject's claim of self-incrimination as the reason for refusing to answer an IG investigator's questions need not merely be accepted. If there is a possibility of self-incrimination, the IG should not pursue further the particular line of questioning led to the claim until legal advice on the issue is obtained. Additional questioning, concerning matters for which there is no claim of self-incrimination, may continue if the individual is not a suspect as a result of making the claim.

(1) If, after consulting with a judge advocate or command counsel, the IG determines there is a basis for the claim of self-incrimination, no further effort should be made to obtain information concerning the area of claimed self-incrimination from the witness or subject unless the individual waives his or her right against self-incrimination.

(2) If it can be determined, after consulting with a judge advocate or command counsel, that no basis for the claim exists, the IG may resume the questioning that led to the claim. If the individual still refuses to answer the questions, assistance should be sought from the individual's commander or supervisor in the form of an order to answer the questions. If the individual requests or she should be allowed to discuss the supervisor's order with a lawyer.

(3) DA personnel who are witnesses or subjects may not lawfully refuse to answer questions properly related to an IG investigation unless answering the question will incriminate them or involve certain privileged communications. See Section V, Privileges, Military Rules of Evidence, MCM.

f. Union representation at interviews (see 57114(a)(2)(B)).

(1) All DA civilian employees who are represented by any labor organization which is certified as the exclusive representative of a bargaining unit have a right to union representation at investigatory examination if the employee reasonably believes the examination may result in disciplinary action against the employee and the employee requests representation. In addition, the local union contract may provide for union representation when the employee does not request it. IGs should know the contents of the local union contract or should coordinate with the local CPO management-employee relations specialist.

(2) Although subjects and suspects are the most likely to make such requests, witnesses may also make them. IGs should

State of Montana

Marc Racicot, Governor



Department of Revenue

Mick Robinson, Director

P.O. Box 202701

Helena, Montana 59620-2701

December 21, 1993

Mike Cooney
Secretary of State
Montana State Capitol
P.O. Box 20281
Helena, Montana 59620-2801

Dear Secretary Cooney:

Enclosed please find Mr. Robinson's response to the questionnaire sent out by John Vincent, Chairperson of the Ethics Advisory Council.

Sincerely,

A handwritten signature in cursive script that reads "Linda Goan".

Linda Goan
Administrative Assistant

/lg
Encl.

DEPARTMENT OF REVENUE

MICK ROBINSON, DIRECTOR

- A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA?

DOR does not have an agency policy or separate ethics code in place. We have relied on the provisions found in 2-2-101, MCA.

- B. If so, can you provide a copy of the policy and any related information available on the policy?

N/A

- C. Do you have any recommendations if, or what, you think the state should adopt to improve its ethics laws?

I think it would be beneficial if a state policy were created and published in the Montana Operations Manual, Volume III (the State Personnel Policy Manual). In addition, published guidelines similar to those already published for such issues as Political Activity, Reasonable Accommodation and Disciplinary Action would be useful in providing practical guidance for the day-to-day administration of an Ethics Policy.

- D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

If there were restrictions placed upon state employees accepting employment following service in government, any limitations should be clearly tied to those situations where an adverse impact would result upon the employee accepting other employment. The duration of any such limitation would be difficult to set and may need to be dependent upon the particular situation. A range of time that provided some flexibility and use of judgement and discretion may be beneficial in dealing with diverse situations.

- E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

If the state adopted a clearly written policy along with the published, practicable guidelines, then ethics violations could be handled much like other



EXHIBIT 2
DATE 2-6-95
SB 115, SB 136

OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL
HELENA, MONTANA 59620
(406) 444-3095

Nancy Keenan
Superintendent

To: John Vincent, Chairperson, Ethics Advisory Council

Department- Office of Public Instruction

Name and Title- Ken Toole, Personnel Officer

A. Do you have any agency ethics code for your employees other than the statutory provisions found in 2-2-101, MCA?

No

B. If so, can you provide a copy of the policy and any related information available on the policy?

N/A

C. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws?

Codification of conduct should be limited to addressing situations which result in unfair enrichment or harm done to others in the course of state employment such as conflicts of interest.

A comprehensive code of conduct should be addressed through personnel policies adopted by the Department of Administration. This code should cover employer expectations of behavior such as courtesy, honesty, etc etc.

Regarding a code of conduct for elected officials, we refer you to ethical guidelines currently under consideration by the Public Service Commission (attached). These guidelines appear to be quite comprehensive.

D. If there were restrictions placed on state employees following service in government, (revolving door prohibitions) then what limitation should be established and how long should they be?

Our understanding is that there is currently a 6 month prohibition. That amount of time is adequate. We do have a concern that onerous restrictions in this area could effect our ability to recruit.

E. Would you prefer to have personnel matters involving ethics

personnel policy violations internally. However, for those ethics violations that involve the acceptance of employment outside of state government, an independent outside agency would be the better choice. Once an employee terminates their employment, the employee/employer relationship changes and I would question the agency's authority in taking actions against a terminated employee in such cases.

- F. Would you be interested in presenting your position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

This written response provides sufficient input to the panel.

DEPARTMENT: Department of Natural Resources and Conservation

YOUR NAME and TITLE: Mark A. Simonich, Director

A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA?

No.

B. If so, can you provide a copy of the policy and any related information available on the policy?

Not Applicable.

C. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws?

This agency has not experienced problems with violations of the ethics code as it currently exists. Although improvements in the ethics code may be desirable to address potential ethics problems, we must be aware that a more restrictive ethics code, in the absence of documented problems, could have a negative effect on those individuals who are willing to commit themselves to public service. For example, severe restrictions or stringent limitations on a public employee's ability to move from the public sector to the private sector may significantly impact a person's willingness to accept public employment in the first instance. Changes to the ethics code should be responsive to real problems in Montana rather than isolated incidents or the problems experienced in large bureaucratic forums, such as the federal government.

D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

In accord with the response in C. above, this agency would recommend the following amendment to Mont. Code Ann. § 2-2-201(1) (1993):

"(1) Members A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its

violations handled by an independent outside agency or your agency?

This would depend on the potential consequences. If the consequences are criminal or if civil penalties are an option, it should be handled by an outside agency. If the consequences are to be some form of disciplinary action to be taken by the agency, we would want to conduct our own investigation.

- F. Would you be interested in presenting your position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

No

DEPARTMENT: Social & Rehabilitation Services

YOUR NAME and TITLE: Russell E. Cater, Chief Legal Counsel

A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA?

SRS has adopted 2-2-101, MCA, as part of its personnel manual. In addition, SRS has a policy regarding "outside" employment.

B. If so, can you provide a copy of the policy and any related information available on the policy?

PERS 2.13 attached.

C. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws?

More details on potential conflicts would be helpful.

D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

Limitations should be reduced to six months or completely eliminated. The current law should ~~more~~ clearly exempt contracts awarded by the request for proposal process as well as the competitive bid process.

E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

Independent evaluations should be an option available to state agencies. SRS has hired investigators from the Attorney General's office. That has worked well. Don't create another bureaucracy.

F. Would you be interested in presenting you position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

No.

Again thank you for your time and assistance in this survey.

Please return by November 24th to:

Secretary of State, Attn. Garth Jacobson, State Capitol, Helena, Montana 59620

subdivisions involving matters with which the former employee was directly personally and substantially involved during employment, unless the appropriate government agency consents after consultation."

E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

This agency has not formed a preference as to which agency should handle personnel matters involving ethics violations. However, like all state personnel related matters, this agency believes each employee of this agency should be treated in a consistent non-discriminatory manner as compared to an employee in any other state agency. This should be an acknowledged goal regardless of the enforcing agency.

F. Would you be interested in presenting your position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

The position described above is straightforward and clear. If explanation is needed, I would expect it could be presented in less than 10 minutes.

Department of Social and
Rehabilitation Services

SECTION:

GENERAL ADMINISTRATION

PERSONNEL POLICIES
AND PROCEDURES

SUBJECT:

Other Employment.

PURPOSE: It is the purpose of this policy to outline the requirements for an employee to obtain approval to hold outside employment.

POLICY: An employee desiring to hold a job outside SRS must obtain approval from the County Director or the Division Administrator as appropriate.

REQUESTING APPROVAL: The requirements for the request for approval are:

1. The employee must submit the request in writing to the County Director or Division Administrator as appropriate.
2. The request must state:
 - a. The name, type and location of the outside employment;
 - b. The days to be worked (weekdays or weekends); and
 - c. The schedule of hours to be worked.

GRANTING APPROVAL: The County Director or Division Administrator will consider the following guidelines in responding to the request for approval:

1. Does the outside employment conflict with the time the employee should spend at his/her regular duties?
2. Does the outside employment impair the efficiency of the employee for his regular duties?
3. Do the interests of the outside employment and the employment of the individual conflict?
4. Are the public relations of the agency impaired by the employee engaged in the performance of outside duties?

SECTION:

GENERAL ADMINISTRATION

SUBJECT:

Other Employment

The employee should be notified of the decision; if approval is granted, a copy of the request and approval should be forwarded to Personnel Services for inclusion in the employee's personnel file.

OPERATING OWN
BUSINESS:

If approval for outside employment is granted to an employee who is operating his own business, the employee is not permitted to use state property such as telephones, photocopy machines, supplies, or use of state time to conduct outside employment. Use of state property to conduct outside employment may be cause for discipline.

043:2.13

DEPARTMENT: Office of the Commissioner of Higher Education

YOUR NAME and TITLE: Sue Hill Director, Labor Relations and Personnel

A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA?

No

B. If so, can you provide a copy of the policy and any related information available on the policy?

N/A

C. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws?

We have relied on 2-2-105 M.C.A. on several occasions to rule on questions concerning potential conflicts of interest and have found it adequate.

D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

The six month limitation found in 2-2-105 M.C.A. seems sufficient and has served our needs adequately.

E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

We would prefer to handle personnel matters involving ethics violations internally. The Board of Regents has a good appeal mechanism for employees.

F. Would you be interested in presenting you position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

No

Again thank you for your time and assistance in this survey.

Please return by November 24th to:

Secretary of State, Attn. Garth Jacobson, State Capitol, Helena, Montana 59620

DEPARTMENT: Montana Department of State Lands

YOUR NAME and TITLE: Bud Clinch, Commissioner

A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA?

Ethics paper from the Legal Staff

B. If so, can you provide a copy of the policy and any related information available on the policy?

Attached.

C. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws?

No

D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

Six months time frame

E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

Department of State Lands to handle.

F. Would you be interested in presenting your position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

No, not unless requested to do so.

Again thank you for your time and assistance in this survey.

Please return by November 24th to:

State Attn: Garth Jacobson State Capitol Helena Montana 59620

ETHICS REVIEW
RECLAMATION DIVISION ALL-STAFF MEETING
February 26, 1993
Jorgenson's, Helena, Montana

Ethics - Of or relating to moral action, conduct, motive of character; ... Professionally right or befitting; conforming to professional standards of conduct.

All employees of the Reclamation Division are subject to the ethical standards found in Title 2, Chapter 2 of the Montana Code Annotated.

§2-2-105, MCA, provides guidelines for conduct. Guidelines advise the employee of possible violations of ethical conduct, but do not provide a sanction. There are three guidelines:

- 1) Don't acquire any business interest which may conflict with the mission of your agency.
- 2) After termination of employment with the agency, don't work on projects you worked on while employed with the agency.
- 3) Do not do anything in your employment with the agency which could be interpreted as giving yourself a business benefit.

FIDUCIARY - A person holding the character of a trustee in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. A person having duty, created by another's undertaking, to act primarily for another's benefit in that undertaking.

The reclamation division is a fiduciary for the public trust. Our agency is obligated to administer and enforce the reclamation laws in Title 82, Chapter 4 of the Montana Code Annotated. Each employee is equally obligated to act as a fiduciary for the public trust in their position. This means acting, according to legal standards, regardless of the impact of your actions to yourself, or others.

§2-2-121, MCA states instances in which an employee has breached his or her fiduciary duty:

- 1) Don't use state equipment or time for your personal projects.
- 2) Don't have any business dealing with persons you inspect or supervise.
- 3) Don't take money or any other compensation to assist applicants, licensees, operators, or contractors. (This means

alcohol, hunting privileges, free tickets to cultural events, cash, gifts, etc.)

- 4) Don't look for job involving people or companies you inspect without informing your supervisor **IN WRITING** that you are doing so.

§2-2-125, MCA, also provides instances in which an employee is deemed to have breached his or her fiduciary duty. They are remarkably similar to the previous statutory prohibitions:

- 1) Don't have any business dealings with persons you supervise or inspect.
- 2) Do not act as counsel, consultant, representative, or agent for any applicant, licensee, operator, or contractor.

SMCRA FINANCIAL STATEMENTS

SMCRA prohibits any employee working in the coal program from possessing a direct or indirect financial interest in any underground or surface coal mining operation. Coal mining operation is defined as: "the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite or lignite or of reclaiming the areas upon which such activities occur."

We are all familiar with the financial disclosure statements which must be filed by coal program employees before February 1st of each year. The focus is generally upon any financial interest in the mining of the coal; such as owing the stock of coal producer, or having a mineral interest in the coal. I want to point out that the prohibition also includes having any financial interest in the reclamation of a coal mine as well. These interests held by the employee are not limited to the state of Montana.

SUMMARY

If you have any question about the ethical nature of your actions, consult your supervisor. If there are any questions at all, the supervisor should contact the legal staff for an legal opinion on the activity.

The ethics statutes are only one method to ensure that the credibility and integrity of the Department is preserved to serve the public trust. The best way to preserve that credibility and integrity is for each employee to consider whether his or her actions are consistent with the agency's legal obligations; and are free from any connotation of self-dealing.

DEPARTMENT: Commissioner of Political Practices

YOUR NAME and TITLE: Ed Argenbright, Commissioner

A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA? No

B. If so, can you provide a copy of the policy and any related information available on the policy?

C. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws? Be sure in your deliberations to consider the difference between the branches of government.

D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

If the legislature passed restrictions they would act as a powerful disincentive for recruiting qualified people, especially from the private sector, so the limitations should be minimal as to type and length of application.

E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

This depends on the violation or potential - Generally it's best to handle issues as close to the source as possible - Certainly proactive training and involvement should be at the agency level. Enforcement is a question and this should be by an independent politically neutral agency.

F. Would you be interested in presenting your position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

I'd prefer not to present, but rather learn from the panel recommendations.

Again thank you for your time and assistance in this survey.

Please return by November 24th to:

Secretary of State, Attn. Garth Jacobson, State Capitol, Helena, Montana 59620

DEPARTMENT: COMMERCE

YOUR NAME and TITLE: BARBARA CHARLTON - INGT SERVICES
444-4304

A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA?

DOC DOES NOT HAVE AN AGENCY CODE OF ETHICS OR POLICY FOR ALL CIVIL EMPLOYEES OTHER THAN THE STATUTORY PROVISIONS FOUND IN 2-2-101 MCA. THE BOARD OF INVESTMENTS HAS A CODE OF ETHICS + STANDARD OF CONDUCT MEMORANDUM. (SEE ATTACHED MEMO)

B. If so, can you provide a copy of the policy and any related information available on the policy? SEE ATTACHED

BOARD OF INVESTMENTS - CODE OF ETHICS + STANDARD OF CONDUCT

C. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws? SOME CODE OF ETHICS ISSUES THAT HAVE BEEN RAISED IN THE DEPT OF COMMERCE: PRIVATE BUSINESSES PAYING FAIR EMPLOYER PARTIES (I.E.) CHRISTMAS PARTIES. HOW TO HANDLE EMPLOYEES WHO "MOONLIGHT" ON THEIR OWN TIME DOING SIMILAR WORK AS WHAT THE EMPLOYEE DOES ON THEIR STATE JOB (I.E) TRAINING SESSIONS OR CONSULTING WORK.

D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

NO COMMENTS, THERE ARE A LOT OF ISSUES TO CONSIDER BEFORE THE STATE PLACES THESE KIND OF RESTRICTIONS ON FORMER EMPLOYEES.

E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

WE BELIEVE THAT PERSONNEL MATTERS ARE BETTER HANDLED BY EACH DEPARTMENT RATHER THAN AN INDEPENDENT OUTSIDE AGENCY. IT WOULD BE WISE TO HAVE (1) ONE CONTACT PERSON OR OFFICE OUTSIDE THE DEPT TO CALL TO DISCUSS INTERNAL ETHICS VIOLATIONS.

F. Would you be interested in presenting your position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

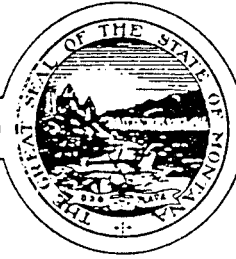
NOT INTERESTED IN MAKING A PRESENTATION.

Again thank you for your time and assistance in this survey.

Please return by November 24th to:

Secretary of State, Attn. Garth Jacobson, State Capitol, Helena, Montana 59620

BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE



STAN STEPHENS, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 442-1970

TELEFAX (406) 449-6579

HELENA, MONTANA 59620

MEMORANDUM

TO: BOI Employees
FROM: Dave Lewis *Dave Lewis*
DATE: April 30, 1991
RE: Code of Ethics

The attached code was revised by the Board at its April meeting. It is intended to give us some guidance in dealing with the sensitive situations which invariably arise as a result of our employment.

Please review this and let me know if you have any questions.

CODE OF ETHICS

Personal Benefit

No person employed by the Board of Investments may profit either directly or indirectly from proprietary information. In particular, employees may not take positions in securities held by the Board or currently on the Board's approved buy list without the prior approval of the Chief Investment Officer or his assistant. There shall be no transactions allowed in which an employee has proprietary information which gives him an unfair advantage over members of the general public.

Accepting Gifts and Favors

Gifts include substantial favors, money, credit, special discounts on goods or services, free services, loans of goods or money, trips, hotel expenses, or excessive entertainment. Except in situations described below neither you nor members of your household are allowed to accept these gifts. There are some situations when it would be appropriate however:

- (a) Gifts of small dollar value given at Christmas or for special occasions when gift giving is customary;
- (b) Unsolicited nominally valued advertising materials such as a pen or calendar;
- (c) Awards given by charitable, educational, civic, or religious organizations for meritorious contributions or services; or,
- (d) Travel expenses paid by firms in which we have invested or are considering investment, if the purpose is to further inform staff about the operations of such firms.

If you are offered a gift that is not included in the list above, by someone with whom you have a business relationship at the Board, you should politely return it. Any questions concerning the propriety of accepting a particular gift should be directed to your supervisor.

Lending Relationships

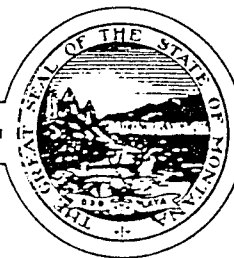
Lending officers are not permitted to extend credit to themselves, relatives, or companies in which the lending officer has an interest. Such interest may be either direct or indirect or rest in a family member. Linked deposits are covered under this regulation as well as loans, mortgages, or any other financial transaction of the Board. Any financial transaction of the Board affecting a Board member, employee of the Board, or family member of an employee or Board member must be disclosed to and approved by the Board prior to such transaction taking place.

Participation in Public Affairs

Employees may volunteer for civic, political, and public affairs activities. However, employees must participate in such activities on their own time. Such participation requires annual leave or comp time be taken if performed during regular work hours. Care must be taken to ensure that no conflict of interest occurs with Board activities.

BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE

EXHIBIT 2
DATE 2-6-95
1 SB 115 SB 136



STAN STEPHENS, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 442-1970

TELEFAX (406) 449-6579

HELENA, MONTANA 59620

MEMORANDUM

TO: Board of Investments

FROM: Dave Lewis

A handwritten signature in cursive script that reads "Dave Lewis".

DATE: April 24, 1991

RE: Standards of Conduct

State law contains several statutes which apply to our operations. The pertinent language is shown below:

2-2-104 R.C.M. Rules of conduct for all public officers, legislators, and employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty. A public officer, legislator, or employee may not:

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans

2-2-121 R.C.M. Rules of conduct for state officers and state employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) A state officer or state employee may not:

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

The Code of Ethics which the Board adopted in 1988 is enclosed for your review. We attempted to address this area but I believe that we did not clearly deal with all the potential issues. We have an informal policy that any purchase of an employees mortgage would go to the Board, but obviously that does not go far enough.

I recommend to the Board that the Code of Ethics and our administrative rules be amended to require that any financial transaction of the Board affecting an employee or Board member, or the family of an employee or Board member, must be referred to the Board for final action. This will allow the Board to review that transaction and test it for compliance with the statutes referenced above. This will eliminate any inadvertent violation or appearance of violation of those statutes. The spirit of this rule is that there should be every effort made to protect the Board from any appearance of favoritism or improper action. No rule can be drafted so perfectly as to eliminate every loop hole, however, the intent can certainly be made plain to all affected parties and we must rely on the good faith effort of those parties to comply with the spirit of the rule.

SECRETARY OF STATE

Dec 23 1 17 PM '93

RECEIVED
SECRETARY OF STATE

DEPARTMENT: *Department of Administration* _____

YOUR NAME and TITLE: *Lois Menzies, Director* _____

A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA?

No.

B. If so, can you provide a copy of the policy and any related information available on the policy?

N/A

C. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws?

Section 2-2-105, MCA might be improved by clarifying the language. For example, how many months following termination should an officer or employee refrain from obtaining "employment in which he will take direct advantage, unavailable to others, or matters with which he was directly involved during his term or employment?" Perhaps the six month prohibition in 2-2-201, MCA should apply in 2-2-105, MCA.

Overall, the code could be clarified by indicating clear sanctions and providing better definitions of the following terms:

a)"public trust"

b)"further substantially has personal economic interests",

c)"substantial financial interests."

There does not appear to be an enforcement mechanism for violations of 2-2-105, MCA. (See response to E)

D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

The restrictions outlined in section 2-2-201, MCA satisfactorily address this question.

E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

It is appropriate for ethics violations to be handled by the agency. They should be resolved at the lowest possible level without the time and expense of involving a board or commission. An agency has the discretion of involving the county attorney for those violations under 2-2-103, MCA.

F. Would you be interested in presenting your position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

No.

Again thank you for your time and assistance in this survey.

Please return by September 28th to:

Secretary of State, Attn. Garth Jacobson, State Capitol, Helena, Montana 59620

January 11, 1994

Q. Do you have an ethics policy for your employees other than the statutory provisions found in 2-2-101, MCA?

NO.

A. If so, can you provide a copy of the policy and any related information available on the policy?

N/A

C. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws?

Section 2-2-105, MCA might be improved by clarifying the language. For example, for how many months following termination should an officer or employee refrain from obtaining "employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term or employment?" Perhaps the six month prohibition in 2-2-201, MCA should apply in 2-2-105, MCA.

Overall, the code could be clarified by indicating clear sanctions and providing better definitions of the following terms:

- a) "public trust"
- b) "further substantially his personal economic interests",
- c) "substantial financial interests."

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F. Would you be interested in presenting your position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

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25
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MARC RACICOT
GOVERNOR

MONTANA
DEPARTMENT OF AGRICULTURE

OFFICE OF THE DIRECTOR
AGRICULTURE/LIVESTOCK BLDG.
PO BOX 200201
HELENA, MONTANA 59620-0201

LEO A. GIACOMETTO
DIRECTOR
(406) 444-3144

FAX (406) 444-5409

EXHIBIT 2
DATE 2-6-95
SB 115 SB 136

November 30, 1993

Mr. John Vincent
Chairperson
Ethics Advisory Council
P.O. Box 202801
Helena, MT 59620-2801

Dear John:

Thank you for involving the Department of Agriculture in your survey; however, at this time I am not sure we would have a lot to offer.

Enclosed is a copy of our completed survey.

Thank you again for your interest in the Department's opinion.
Have a wonderful day.

Sincerely,

A handwritten signature in black ink, appearing to be "Leo A. Giacometto".

Leo A. Giacometto
Director

MONTANA DEPARTMENT OF AGRICULTURE

LEO A. GIACOMETTO, DIRECTOR

A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA?

Answer. No

B. If so, can you provide a copy of the policy and any related information available on the policy?

Answer. N.A.

C. Do you have any recommendations if or what you think the state should adopt to improve in ethics laws?

Answer. At a minimum, the existing statutes should be reviewed in light of any Attorney General Opinions, or court cases which may have been decided on one or more of these sections. In particular we would direct your attention to a section this department has had occasion to interpret, namely Section 2-2-131 M.C.A. The Montana Attorney General has interpreted that section to apply in certain limited circumstances (37 ATTY.GEN.OP.NO.104(1978)). Your council should consider clarification.

D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

Answer. It seems to us that the focus of this type of restriction should be on the prevention of conflict where the exiting employee may become involved in the private sector on a project which was pending before the public agency and in which he was involved at the time of his employment. Absent that type of conflict, time periods may not be important unless you are concerned with the appearance of conflict as well as conflict in fact.

E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

Answer. Our agency.

F. Would you be interested in presenting your position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

Answer. I am not sure we would have a lot to offer.



PUBLIC SERVICE COMMISSION

1701 Prospect Avenue • PO Box 202601
Helena, Montana 59620-2601
Telephone: (406) 444-6167
FAX #: (406) 444-7618

Bob Rowe, Commissioner
District 5

November 30, 1993

Hon. Mike Cooney
Secretary of State
Montana State Capitol
Helena, MT 59620-2801

Re: Ethics Questionnaire

Dear Secretary of State Cooney and
Members of the Advisory Council:

Thank you very much for the opportunity to participate in your important work. I am responding on my own behalf, and not for the Commission as a whole. In addition to addressing your specific questions, I am enclosing several documents which may be of interest, including The Public Service Commission's draft ethics guidelines.

The Commission is accepting comments on its ethics guidelines through December 17. I would very much welcome any thoughts you may have.

In response to your specific questions:

A. Agency Ethics Code.

The Public Service Commission has tentatively adopted ethical guidelines, the product of a months long internal process. The guidelines are based generally on the Model Code of Judicial Conduct, which has not been adopted in Montana. The guidelines do not address every item I had argued should be included. They do however represent a solid compromise between parties with sincere ethical viewpoints. I am very proud of what my fellow commissioners and staff members accomplished.

B. Copies.

Attached are the draft guidelines, a summary prepared by me, and several draft sections which were not included in the draft approved by the Commission, but which may be helpful in your work.

C. Recommendations for Improved State Ethics Laws.

1. Gifts. The PSC's statutes include a specific prohibition on accepting gifts from railroads (Section 69-1-112, MCA), dating back to the days of the Railroad Commission. Other gifts are governed by the more general language of Section 45-7-104. A uniform standard should apply to interactions with all regulated entities.

The term "trivial benefit" in Section 45-7-104(5)(b) is vague. I had supported a one to three dollar limit for the Commission's guidelines, enough to allow a cup of coffee at someone's office, but less than a meal. My personal feeling is that any time I can pay I should pay (no free meals, coffee, etc. in restaurants). I'm not comfortable with the various banquets elected officials are invited to attend, and generally either avoid them or pay something toward the meal. I recognize that Public Service Commissioners should perhaps be held to a different standard than other elected officials or legislators.

2. Campaign Contributions. Montana law and all ethical codes distinguish campaign contributions from gifts. Montana law does not directly specify that campaign contributions may not be used for non-campaign personal expenses. Some states have more precise statutes specifying the uses to which campaign fund balances may be put (e.g., contributing to other candidates, charitable donations).

I drafted language (based again on the Model Judicial Code) concerning campaign contributions in sensitive situations, and concerning campaign conduct. The Commission recognized it lacked authority over non-Commissioner candidates, and focused on conduct in office.

3. Substantive Conduct in Office. I drafted language attempting to address the obligation to "work hard, be accountable and do right." This may be a fuzzy concept, but speaks to legitimate public concerns not directly addressed in most ethics codes. As a public employee, I think it's ethically important to have a clear sense of mission. I also think it's ethically important to risk unpopularity where a situation demands it (the Atticus Fitch rule of ethics). Because these matters are somewhat extraneous to the general conception of ethics, the Commission did not include them.

4. Elected Officials and Employees. Public employees should be held to a high standard. Elected public servants should be held to an even higher standard. The Commission struggled with the extent to which the same guidelines should apply to both. The Commission also attempted to address the extent to which its ex parte prohibition should apply to advisory staff.

5. Implementation and Enforcement. I drafted a lengthy implementation section. The Commission elected to remain focused on the specific guidelines, but agreed that the ethical "process" was vital. Far more important than sanctions is the effort to institutionalize an ethical conversation within state government. From this perspective the process of developing a set of ethical guidelines was as important as the guidelines themselves.

D. Revolving Door.

At the Commissioner level, this has not been a problem at the Montana Public Service Commission. Several staff members have gone on to work in regulated industries over the past fifteen or so years, but have not had any special influence with the Commission of which I am aware.

In general, there seem to be three "revolving door" concerns:

1. Allowing one's decisions in public office or employment to be influenced by prospective employment after leaving office. This should be disapproved.

2. Using specific information gained in office for personal enrichment after leaving office. Rule 1.11 of the attorneys' Rules of Professional Conduct prohibits representing "a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation." A similar provision could apply to all state employees.

3. Using one's general influence or "connections" acquired in office after leaving office. Prohibitions on appearing before the specific agency for periods of from six months to two years are intended to address this concern. The principle is important, but someone who is highly respected when they leave office may be just as well-regarded after three years. Ideally, any post-governmental service employment should be based on the merits, and not on access.

Balanced against these concerns is the ex-public employee's need to make a living doing what she or he knows how to do. That should be based on their skills and abilities, not on their well-connectedness. Part of the answer may be to emphasize to current public employees that everyone deserves equal access, and that decisions should be based upon the merits.

E. Need for an Independent Agency to Handle Ethics Violations.

Both in-house and independent processes are important. An ethical culture needs to be indigenous, and must be cultivated by the organization itself. It should be grounded in a clear agency mission or purpose. We are attempting to do this at the Public Service Commission.

An outside agency might serve three purposes:

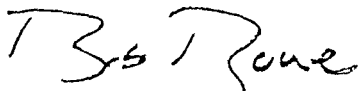
1. Provide support for the agency's own process, for example providing seminars through the Department of Administration Professional Development Center.
2. Provide non-adversarial ethical advisory opinions.
3. Conduct investigations and issue opinions as needed. Where serious ethical questions arise, all parties may have an interest in obtaining independent review.

The Attorney General now fulfills part of the "independent review" role through the advisory opinion and informal opinion process. State government would benefit from identifying the agency which will be responsible, and clarifying that ethical issues which are presented to it will be responded to promptly.

The question focuses too narrowly on "ethics violations." Most people want to conduct themselves ethically. Most ethical issues don't involve clear violations, so much as uncertainty about what conduct is appropriate. We would probably all find unacceptable much conduct which was consistent with the norms of earlier years. The goal ought to be "zero defect ethics" achieved by creating an ethical climate, articulating its standards, and then increasing those standards.

Thank you very much for your commitment to this project. I wish to be of assistance in any way possible.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Rowe".

Bob Rowe

encl.

ETHICAL GUIDELINES

These guidelines demonstrate ethical requirements for public service commissioners, and when applicable, the commission staff. The guidelines incorporate requirements of Montana law.

GUIDELINE ONE

Commissioners should uphold the integrity and independence of the Commission.

The Commission has adjudicative, policy-making, representational and administrative responsibilities. Commissioners should observe high standards of conduct in order to preserve the integrity and independence of the Commission and adhere to the Montana Constitution and statutes.

GUIDELINE TWO

Commissioners should avoid impropriety and the appearance of impropriety.

Commissioners should conduct themselves in accordance with the law in a manner that promotes public confidence in the integrity of the Commission.

Commissioners should not allow personal relationships to influence their official conduct or judgment.

Commissioners should avoid the appearance of impropriety.

Commissioners should not convey and not allow others to convey that the Commission can be improperly influenced.

Commissioners and staff should refrain from biased public comment about pending contested cases.

GUIDELINE THREE

Commissioners and staff should perform their duties impartially and diligently.

Commissioners and staff should maintain order and decorum in Commission proceedings. Commissioners and staff should be patient, dignified and courteous to parties, witnesses, attorneys and others with whom they deal, and should expect similar conduct of participants in Commission proceedings. Commissioners and staff should encourage public involvement in its activities and afford all legally interested parties full legal rights before the Commission.

Commissioners and staff should act expeditiously and diligently on Commission business.

GUIDELINE FOUR

Commissioners should minimize the risk of conflict of interest.

Commissioners may participate in activities which do not create a conflict of interest for the Commission. Commissioners should refrain from financial, business, or professional dealings which reflect adversely on their impartiality, interfere with proper performance of their duties, or exploit their positions. Commissioners should not acquire or maintain an interest in any business or undertaking which may be affected to its economic benefit by official action of the Commission.

GUIDELINE FOUR (continued)

Commission staff members should not acquire or maintain an interest in any business or undertaking if they advise the Commission on decisions which affect such business or undertaking.

Commissioners and staff should not accept gifts or loans from regulated enterprises, employees of regulated enterprises, or parties in proceedings before the Commission.

The term "gift" does not include:

- 1) refreshment consumed while attending a meeting or other gathering scheduled in the normal course of Commission business;
- 2) the limited use of shared transportation where separate transportation would be impractical, such as a site visit to an industrial location;
- 3) reimbursement by regulated entities for Commission travel expenses for Commission business (e.g., audits, inspections and attendance at regulatory meetings) made directly to the Commission's Centralized Services Division;
- 4) campaign contributions reported as required by state law.

Commissioners may receive reasonable compensation and reimbursement of expenses from entities not subject to Commission jurisdiction or not expected to become parties before the Commission, if doing so does not give the appearance of impropriety or create a conflict of interest.

GUIDELINE FIVE

Ex parte contact is not permissible.

The prohibition on ex parte communication in contested cases or other proceedings where facts or law are adjudicated is a statutory requirement. Ex parte communications means communications to a Commissioner on an issue in a contested case by a party or person in the contested case proceeding. Commissioners must comply with Montana law on ex parte communications and must not participate in ex parte communications on an issue in a contested case at any time after the case is filed with the Commission.

Commissioners and parties should neither initiate nor respond to ex parte communications of a policy or substantive nature on an issue in a contested case proceeding. Commissioners should not solicit ex parte communications through staff and staff should not convey ex parte communications to Commissioners. Any communications with other disinterested persons or non-parties should be disclosed if (a) the person becomes a witness, or (b) the opinion is expressly relied upon by the Commissioner or staff.

A Commissioner receiving an ex parte communication subject to these guidelines should disclose it to all parties and give parties an opportunity to respond. As a result of improper ex parte communications, the Commission may 1) adversely rule on specific issues subject of the ex parte contact, 2) strike evidence or pleadings tainted by the ex parte communication, or 3) make a public statement of censure when the ex parte communication is determined to be part of a continuing pattern of conduct.

PUBLIC SERVICE COMMISSION ADOPTS
ETHICS GUIDELINES

"Public servants who appear to reasonable persons to do wrong actually do wrong by eroding the trust between citizens and representatives on which our government depends. Therefore, there is an ethical obligation to protect the appearance of propriety."

Jamison Institute on Ethics

After months of work, the Montana Public Service Commission has initially adopted a set of Ethical Guidelines. Those guidelines are now available for public comment, through December 17. Personally, I am eager to hear from western Montanans:

*What kind of conduct do you expect from me?

*Are there ethical issues unique to the Public Service Commission, which might not be faced by legislators or other public servants?

My goal will be to hold myself to the highest workable standard identified.

My interest in ethical guidelines for the PSC started over a year ago, before I was elected. Public mistrust of anyone running for office was too real to dismiss as misplaced cynicism. I wanted the public to know that even when the Commission was required to take unpopular actions, those actions were based on applying the law to the facts of the case, as scrupulously as possible. Approving rate increases is never popular, for example.

I began by taking the toughest ethical standards I knew, the Code of Judicial Ethics, and rewriting them to apply to the PSC. The Commission decides complex cases, like judges. It also makes policy, like the legislature. It also helps individuals with

utility problems, and attempts to involve the public in its decision-making. The Commission also administers a small agency staff.

After joining the Commission last January, a working group began meeting every month or so. We fired memos back and forth. We met to debate, sometimes loudly.

We asked questions: Are ethics public or private? Are they a list of "don'ts" and "gotchas," or are there positive responsibilities as well? Do tougher standards apply to commissioners than to staff? Do standards for deciding when it's proper to use Commission funds to attend a meeting belong in ethics guidelines, or in the policy manual we are also developing? Can guidelines say anything about campaign practices? Most importantly, if we become too "judicial," does that limit our ability to be responsive to the people we represent?

Several alternatives were presented to the full Commission at a public meeting. The commissioners finally narrowed the list down to five statements we all agreed are important. Each one is explained in more detail in the guidelines:

One: Commissioners should uphold the integrity and independence of the Commission.

Two: Commissioners should avoid impropriety and the appearance of impropriety. We should not allow ourselves to be improperly influenced.

Three: Commissioners and staff should perform their duties impartially and diligently.

Four: Commissioners should minimize risk of conflict of Interest. We should refrain from business or financial dealings which would affect our impartiality or take advantage of our positions, such as owning stock in regulated companies. We should not accept gifts or loans from regulated companies, or from others who are parties in cases in front of us.

Five: Ex parte contact is not permissible. "Ex parte" contact is communication from a party in a contested case. This guideline strengthens the existing requirement in Montana administrative law, and in the PSC's current rules.

Most of us, commissioners and staff alike, agreed debating ethics over the months caused us to rethink all sorts of actions, and gave us a clearer sense of how we wanted to do our jobs. Most of us also agreed "guidelines" were a necessary step, but that ethics must be built into our daily work.

I will close with one more quote, from social scientist James Q. Wilson. Duty, he writes, is a moral sense which leads individuals to "honor obligations in the absence of social rewards for doing so." I was almost surprised to find out how strong is the day-by-day sense of responsibility I experience as a public servant. It's a powerful feeling. Ethical guidelines won't create a sense of duty where one doesn't exist. They do help us understand what duty to the public means.

If you want a copy of the draft guidelines, or if you want to tell me what conduct you expect of me, please write or call. Montana Public Service Commission, 1701 Prospect Ave., Helena MT 59620. My phone number is 444-6167.

or concerns about Commission proceedings; 2) Commissioners and staff may obtain the advice of disinterested persons or experts on issues before the Commission. These contacts should be disclosed to the parties if (a) the person becomes a witness, or (b) the opinion is expressly relied upon by the Commissioner or staff.

G. Although this Guideline does not apply to non-adjudicatory proceedings such as rulemaking or notices of inquiry, Commissioners and staff should strive to ensure that all proceedings are conducted consistently with the principles of fundamental fairness and openness.

H. Should a Commissioner or staff member receive an ex parte communication subject to these Guidelines, he or she should place a summary of the contact in the record, disclose it to all parties, and give parties an opportunity to respond. Parties may request an opportunity to cross-examine the person who made the communication.

I. The Commission reserves the right to impose additional sanctions for ex parte communications including: 1) Making an adverse ruling on specific issues which were the subject of the ex parte contact. 2) Striking evidence or pleadings which is tainted by the ex parte communication. 3) A public statement of censure when the ex parte communication is determined to be part of a continuing pattern of conduct.

GUIDELINE EIGHT *

Commissioner-Staff Relations

A. Commissioners and staff members should treat one another as professionals, and with respect.

B. Commissioners should not take advantage of their authority for personal reasons. Commissioners and staff should not allow personal relations to influence or interfere with their work as professionals.

C. Consistent with applicable law ..., staff are free to engage in political activity. However, Commissioners should not initiate requests for staff involvement in political activity.

D. This guideline applies to both non-exempt and exempt staff.

GUIDELINE NINE *

A. Commissioners and staff are caretakers of the public trust, including the prudent expenditure of public funds.

B. Commissioners and staff should generally be performing public business during office hours. Commissioners should strive to be reasonably available at other times as well.

C. Travel at public expense, including out-of-state travel, should occur when it benefits the Commission in the fulfillment of its responsibilities, benefits regulation, or benefits ratepayers generally. Travelling Commissioners and staff should be diligent in attending to official business, and upon their return should ensure that the Commission benefits from their experience. Travelling Commissioners and staff may engage in leisure activities which do not conflict with official business, but must do so at their own expense.

GUIDELINE TEN

Implementation and Compliance.

~~(These guidelines are intended both as rules to be followed, and as encouragement to ethical thinking in all situations.)~~

~~A. Ethical thought and action involves a process, as much as following specific rules. More than one outcome may be ethically acceptable. Essential elements of ethical thinking and conduct are individual reflection, dialogue, organizational consideration, public disclosure and re-examination of ethical issues.~~

~~B. The Commission and staff should periodically meet to discuss ethics and ethical issues.~~

~~C. A. The Commission and staff should incorporate consideration of ethical issues into their ongoing work and deliberations.~~

~~D. B. Commissioners and staff should discuss ethical concerns with colleagues, supervisors, or with Commission counsel. In especially sensitive situations, it may be appropriate to obtain an independent opinion.~~

~~E. C. Matters raising ethical concerns under these guidelines (i.e. receipt of certain items and ex parte contacts) should be disclosed. The Centralized Services Division will maintain a file of disclosure forms, which will be available for public inspection. A breach of these guidelines should be disclosed in a short memo to the Chairman. The memo should describe any corrective action taken. The memo will be circulated and kept in a disclosure file by the Commission Secretary.~~

~~F. The existing personnel procedure concerning corrective actions may be used in serious situations.~~

G. D. The Commission may by vote express its disapproval of the ethical conduct of individual members, or may resort to other measures provided by law.

H. E. These guidelines will be provided to all employees, new employees, Commissioners, and Commission candidates. I. These guidelines will be provided to all regulated enterprises of significant size (~~#?~~), and to all frequent parties before the Commission. They will be expected to ~~adhere to~~ consider these guidelines in their relations with the Commission.

~~(F and G are especially problematic. F may conflict with Martin's advice that many such decisions are legally the individual Commissioner's alone.)~~

Activity or action	SB 115	Current Law 2-2-101 et seq	SB 136
General conflict of interest prohibitions in decisions making actions	Section 7 prohibits voting or participation when person has direct foreseeable pecuniary interests in matter. Excludes matters in which person is a member of a class of people. Leg. creates its own rules.	2-2-112 provides guidelines for leg to not participate when matter directly affects personal or financial interest. Other officials prohibited from participating in matters if they have financial interest in matter. 23-7-203 prohibits members of the legislative liaison to state lottery from owing gambling devices.	Strict prohibition from participating in any matter that legislator or family to fourth degree in has financial interest in. Legislature creates ethics committees to deal with conflict of interest matters. Section 3.
Use of office title for personal gain. Section	Section 8 (6) Prohibits the use of title or prestige of office to obtain anything of value.	Legislators may not use office to obtain employment or contract. 2-2-111(2)	No change from existing law.
Prohibition from state employee from receiving two salaries at the same time for being a legislator and state employment	Does not address this issue. No change from existing law.	No specific provision. Handled by the agencies individually as a personnel matter. State law required all employers permit employees to attend leg	Prohibits double dipping of public employee serving in the leg. Does not address federal employees. Section 1.
Use of confidential information for personal gain	Generally prohibited in matters such as fraud or collusion in public contract or receipt of gifts. Section 8 and 9	Prohibits use of confidential info for person gain 2-2-103(1)(a)	No change from existing law.
Personal interest in public in Contracts	Extensive prohibition found in Section 9, exceptions made for competitive bid or auction bidding	Similar provisions found in 2-2-201 et seq.	No change from existing law.
Nepotism	Very similar to existing law. Section 4.	Prohibition against hiring or promoting the family members to the 4 consiquinty. Some exclusions. Section 2-2-301 et seq	No change from existing law.
Prohibitions against gifts from lobbyists, and others	Prohibits gifts or meals over \$25 if part of influencing a vote (generally prohibit lobbyist from making gifts over 25 per occasion). Can not receive "anything of value" that can be construed as influencing an official act. Section 8	Prohibits substantial gifts that would tend to improperly influence a reasonable person. 2-2-104	No change from existing law.

Activity or action	SB 115	Current Law 2-2-101 et seq	SB 136
Outside employment restrictions	Limitations on public contracts. Section 9. Prohibits or limits involvement in matters of representing others before state agencies. Section 6. Limits regulating one's own business. Section 7.	Similar to SB 115. Contracts 2-2-201, Prohibitions on representation 2-2-121(2)(c)(d), limits regulating one's own business 2-2-121(2)(b)	Adds legislators to these restrictions regarding representing others. Section 4.
Misuse of office for personal or political purposes	Prohibits use of office for personal or political activities unless incidental to function of office. Certain exception may permit limited non-governmental activities. Permits legislative exceptions established in joint rule. Section 5.	May not use state office for private business purposes. 2-2-121. Public employees may not campaign while on the job. 13-35-226.	Prohibits use of office for political purposes unless it is incidental to the office. Excludes legislators, Section 4. This section adds to existing law.
Limitation of post-employment activities	Creates limitations in dealing with former agency or gov. depending on the level of employment. Post-employment restrictions generally last 1 year. Legislators prohibited from lobbying for one year after the expiration of their term of office. Section 11	Officer or employee should not get involved with matter he was directly involved with during employment for months following employment. 2-2-105(3)	Same as existing law but specifies 12 month period to not having any involvement
Reporting of financial interests	Requires extensive reporting requirements for state public officials, high level employees, public member boards, consultants to contacts, and candidates. Sections 13 - 15 Gifts with an aggregate value over \$500 would have to be reported. Would not report meals etc received from lobbyists.	Requires reporting of limited business information by state public officials and their families 5-7-213. Permits voluntary conflict of interest disclosures 2-2-131. Lobbyist Principle required to report certain expenditures of public officials 5-7-208.	No change from existing law.

EXHIBIT 3
DATE 2-6-95
SB 115 SB 136

Activity or action	SB 115	Current Law 2-2-101 et seq	SB 136
Restrictions against representing others before gov. agencies	Prohibits representing anyone before other state agencies by public officials and high level public employees. Other employees may not represent another before their own agency. Legislators would be restricted from representing others before state agencies during session. Legislators could do constituent representation. Section 6	Prohibits state employees and officers from representing others for a fee before their own or a contingent fee other state agencies. 121(1)(c)(d)	Adds legislators to this restriction. Section 4.
Education of regarding matters of ethical conduct.	Provides for establishing an education program for state officers and employees. Section 33.	No provision for education	No change from existing law.
Ethics advisory opinions.	Provides for ethics advisory opinions by ethics commission. Provides for confidentiality for informal opinions. Section 26	No advisory opinions available because section 2-2-132 found unconstitutional.	No change from existing law.
Enforcement provisions.	Provides for the Commissioner of Campaign Practices to investigate and prosecute ethics violation complaints. The Ethics Commission would adjudicate the cases and issue orders. Criminal matters referred to county attorney or attorney general. Sections 36-44	Enforcement preformed by county attorney using trust law 72-34-105 as the basis for initiating an action. Section 2-2-103. Criminal matters handled by county attorney or attorney general.	Leaves existing law as is but adds criminal violation for violations of 2-2-121. Provides civil penalties but does not specify if that is tied to county attorney prosecution or agency action.
Sanctions for violations.	Penalties include civil fines up to \$2,000 per offence and recommendations for disciplinary action by agency or appropriate authority. Also permits loss of pension and other employment benefits upon conviction of office related felony. Section 44, 47 No change in criminal violations.	Violation of 72-34-105 would probable provide that the benefit of the gain would have to be returned or the contract would be voided. Criminal statutes would result in fine or imprisonment.	Civil penalty between \$50 to \$1,000. Criminal penalty between \$50 to \$1,000, 6 mo jail time. Section 4. Adds penalties for local government ethics violations.

Activity or action	SB 115	Current Law 2-2-101 et seq	SB 136
Protection against malicious prosecution.	Provides for fine for malicious complaints and potential payment of other party attorney fees. Section 3	Common law tort malicious prosecution.	Attorney fees available from losing party for legislative conflict of interest violations. Section 3 Statute not clear if this suggest that citizen suits possible. Otherwise common law malicious prosecution tort possible.
Treatment of local governments	Leaves existing law the same	Local gov. officers and employees generally prohibited from having a financial interest in a matter they inspect supervise or perform an official act affecting their financial interest. 2-2-125	Adds local government officials and employees to treatment similar to state employees and officers.
Confidentiality of investigations	Investigations would be confidential until concluded. Section 30.	No provision	No provision
Negotiation for future employment while serving in office or employment.	Section 10 prohibits altering actions in order to obtain future employment	Requires notification of supervisor to negotiate with potential employee that person regulates. Section 2-2-121(f)	No change from existing law
Right to call investigation on one's conduct	Section 39 permits an individual the right to have an investigation on one's own conduct.	No provision	No provision

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN SENATOR LORENTS GROSFIELD, on
February 9, 1995, at 11:00 AM

ROLL CALL

Members Present:

Sen. Lorents Grosfield Chair (R)
Sen. Larry L. Baer (R)
Sen. Sue Bartlett (D)
Sen. Al Bishop, (R)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Greg Petesch, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Subcommittee Business Summary:

Meeting: SB 115, SB 136

CHAIRMAN LORENTS GROSFIELD handed out a list of issues, EXHIBIT 1 and also a guide prepared by the Secretary of State's Office, EXHIBIT 2. He asked if anyone noticed omissions on the issues sheet. He stated the emphasis behind SB 115 is education. This is sporadic under current law.

SENATOR BAER suggested having a seminar at the beginning of each legislative session which would emphasize ethics.

Greg Petesch commented that at the beginning of this session, REPRESENTATIVE BOLLINGER and SENATOR BLAYLOCK both spoke on ethical concerns for legislators. Their discussion was a general philosophical approach.

SENATOR ECK believed a good way to handle education was through advisory opinions. This was struck down in current law because of vagueness of current statute.

CHAIRMAN GROSFIELD asked for suggestions on education for state employees and county employees.

SENATOR BAER commented that this could be handled by an inexpensive pamphlet.

SENATOR BARTLETT commented there were a couple of sections in SB 115, page 23, which dealt with publication of information. This would cover both elected officials and employees.

Garth Jacobson stated that the logic behind the Ethics Commission was to have a centralized location. It is extremely important to have one message. If there is a pamphlet or an education outreach program, it needs to be coordinated amongst all the agencies and anyone else this will touch.

Mr. Petesch commented that the Department of Administration, Personnel Division has a training division which offers courses for state employees. There is a mandatory two hour orientation provision for new state employees. Ethics could be incorporation as part of that program.

CHAIRMAN GROSFIELD stated that one of the major roles of the Commission is education. A big part of the fiscal note comes from the Commission. He believes that presenting an ethics bill to this legislative session with a fiscal note of this size would jeopardize it. This would be a new bureaucracy split between an Ethics Commission and the Commissioner of Political Practices. He is not convinced that it is necessary to have a commission to deal with this issue. We haven't had a huge problem in Montana. If you have a scandal, the net result of that is either an initiative or a legislative overreaction.

SENATOR ECK commented she discussed this with Judy Browning and she stated they were in support of the bill. She suggested that if the fiscal note was the problem, they might combine the commissions and have a Commissioner on Ethics and Campaign Practices. This person should not be appointed by the governor but appointed the way legislative leadership is appointed. They are already asking for a substantial increase in budget because of their new campaign practice initiative. They are asking for an attorney for that project and we are asking for another attorney here.

SENATOR GROSFIELD questioned if this would include the legislature or also public employees. He also asked what current law states regarding this topic.

Mr. Petesch commented there were no guidelines for the Secretary of State to act.

Mr. Jacobson stated the Secretary of State was designated as the entity to provide advisory opinions. The scheme in the late 70s was that that was where the Commissioner of Campaign Practices activities occurred as well. They spun off the Commissioner of Campaign Practices in 76 or 78 and created a separate office.

After Jim Waltemire was elected and forced into preparing some advisory opinions and then set up an ethics committee, it was found unconstitutional. There was both politics and interplay involved. The fact is the entire ethics advisory opinion side of this was out. An elected official should not issue advisory opinions because of the potential political mischief which could occur. That is, where the independent body would be important. A big problem with all of this is politics making determinations. Congress has failed in dealing with their ethical issues.

SENATOR BAER asked how one could avoid politics.

Mr. Jacobson commented that they set up the Ethics Commission in the same manner as the Reapportionment Commission was set up. They have two Democrats and two Republicans and the fifth person was agreed to by both sides. If there is an arbitration structure, the fifth person, who will be the deciding vote, needs to be a person that both parties can trust. In that formula, you recognize that politics exists but you let them have a fair arbitrator which everyone agrees with.

SENATOR BAER commented that when he talked to Judy Browning and she helped prepare some of the provisions in his bill, she expressed a concern for the enormity of the bureaucracy that would be created under SB 115. She didn't address the cost or expense but they were concerned about creating a huge new machine which is not needed. As the outline states, you state there are provisions in SB 115 for advisory opinions and none in SB 136. He stated that he made reference in SB 136 to forming ethics committees for the legislature. There is one in the House right now which could be conformed to the desired use here. There could be one created in the Senate to approach ethical questions brought to them by legislators. When it comes to anyone outside the legislature, that is not addressed in SB 136. A very large, expensive bureaucracy is unneeded. There must be some way to insert this into an existing program such as the Commission on Political Practices. We have to put politics out of mind because no matter what is done there will be the potential for politics. It needs to be made as equitable, fair and unbiased as possible, but there is no way to rule out politics because it will always be there.

CHAIRMAN GROSFIELD asked how the Ethics Committee in the House is made up.

Mr. Petesch stated it is a standing committee in the House. It is evenly balanced politically with four or six members which was just established this session. They were set up to hear the ethics legislation in the House and to issue advice or address matters which arise during the session.

SENATOR ECK commented that she had a discussion with Judy Browning and they decided they could have an advisory council to whatever office was set up and maybe have one person from the

House Ethics Committee and one from the Senate Ethics Committee, two people from government, possibly one being an official and one being an employee, and two members of the public. That kind of a structure would not involve a lot of cost. Ms. Browning felt the Commissioner should be selected in a nonpartisan way. They might run into some real problems in trying to remove the Commissioner.

Mr. Jacobson suggested that following that line of thought a possibility would be to take the Commissioner of Campaign Practices out of the prosecution business in this instance and drop the full FTE in the fiscal note and let it operate with three or four people. That would reduce the fiscal impact by one half. That would clearly make this much more palatable. It is extremely important to have the political balance. When they set up the Ethics Commission they recognized one of the things which SENATOR BAER is concerned about and that is having public employees participating in the decision making process of what is ethical or not. They permit only one person to be a public employee at any level of government. Those four people would be strictly independent with the fifth person potentially being a public employee.

SENATOR ECK stated that would be better than what she mentioned before where everyone would be a public employee with exception of two citizens.

Mr. Jacobson commented they wanted people who were totally divorced from any contact with exception of the fifth person. They recognize that there may be someone in that pool of people that might be a public employee but the majority of the committee would have to be totally independent. The structure itself was very carefully thought out. If the prosecution side was put back into that commission and the staff that they would hire, there would be a need for a few safeguards to assure that the commission acted independent of the staff. A model could be set up which would greatly diminish the cost of this. They wanted to have separate entities involved in the prosecution and adjudication; however, safeguards could effectuate this which would then reduce the fiscal note by one half.

SENATOR BARTLETT asked the Commissioner if his office was administratively attached to some other entity in state government.

Mr. Argenbright answered they are administratively attached to the Secretary of State only for office space. They approve the office space for the Commissioner but other than that they are completely independent.

SENATOR BARTLETT commented this would be a part of the statute. Administratively attached is a mechanism so there is not a proliferation of departments and yet they can still get budget

requests in which flow mechanically but they are autonomous in terms of functions.

CHAIRMAN GROSFIELD asked Mr. Argenbright who would handle the appeal of one of his decisions.

Mr. Argenbright explained that in campaigns, an official complaint is filed with his office. If it appears to have allegations which are sustainable, he accepts it and with the help of the Attorney General's Office they use an investigator or the Assistant Attorney General Jim Scheier. Often times the complaints are frivolous and do not have allegations with a basis. Those are sent back as frivolous.

SENATOR BAER stated he liked that process. He sees the problem arising when Mr. Argenbright has to deal with something which is not definitive to him in the statute. He can't make a decision because the legislature has not provided him enough specificity on what the violation entails and what he should do about it. What he does now is a good, fiscally economic way to handle ethics and he cannot see why that shouldn't continue. The problem is giving the Commissioner something to work with.

SENATOR BISHOP asked whose budget is used for the investigator from the Attorney General's Office.

Mr. Argenbright commented that he pays by the hour to the Attorney General's Office. His budget this time was \$6,000. He has had to ask for supplemental money.

CHAIRMAN GROSFIELD stated that the Commissioner did not deal with public employees.

Mr. Argenbright affirmed that the only complaints he deals with now are those associated with a campaign violation or the allegation of improper lobbyist behavior.

CHAIRMAN GROSFIELD commented that SB 115 does not deal with lobbying.

Mr. Jacobson stated they dealt with lobbyists insofar as gifts. They stay with current law when it comes to lobbyists.

SENATOR ECK commented that most states have a section on campaign finance procedures, one on lobbyists, and one on ethics.

Mr. Petesch commented that was the way the model was originally set.

SENATOR BAER commented that in 143, page 4, line 24, he does address the proper use of public resources to supplement or subsidize in any way a lobbyist, the media or any other method of influence intended to persuade or affect a political decision.

CHAIRMAN GROSFIELD stated that the concept of advisory opinions or enforcement would work with a commission but that has the fiscal note implications. Another way would be to operate the way we do now where the Commissioner takes care of candidates and lobbyists and the various departments take care of their own complaints. Public officers would be left out. Who would be included in "public officers"? Would this be a department director?

SENATOR BARTLETT commented this would be persons elected statewide.

CHAIRMAN GROSFIELD questioned how that is taken care of under current law.

Mr. Jacobson commented by vote in November or recall. But recall is almost impossible to figure out.

SENATOR ECK commented it is dealt with in criminal law.

SENATOR BARTLETT commented that most of the real enforcement is going on through that avenue. There have been two or three instances at state government levels within the last year or two.

CHAIRMAN GROSFIELD stated that that would probably be the case anyway. Criminal violations would be taken care of.

Mr. Petesch commented that would be the egregious cases.

Mr. Jacobson stated that a lot of these accusations are easy to make. That is one of the advantages of having the ability to call an investigation yourself. Right now the only thing available is the press and you have about 15 minutes to respond to the complaint made against you and the next several months are spending backfilling. It is not a very fair process.

CHAIRMAN GROSFIELD commented that the Department of Administration has a required two hour course but would not have a process which would deal with advisory opinions. How would a bureau chief find the necessary information on some activity? Would he go to the legal counsel for that department?

Mr. Petesch affirmed that was the usual method. They would look at the current statutes and explain what the guideline stated.

Mr. Jacobson stated that in State Lands a few years ago there was someone moonlighting representing developers to obtain an RIT grant. They had a real problem with that situation. Eventually the person quit. There was no way for the department to tell the employee he could not continue with moonlighting.

CHAIRMAN GROSFIELD questioned why they could not use current law which states that an employee could not use his position to influence a decision.

Mr. Petesch commented that would apply to 2-2-104 and 2-2-105. The problem with the enforcement mechanism is that you have breached your fiduciary duty. The agency proposed disciplinary action at which point the employee quit and went into private business. That is the only method of enforcement. Under fiduciary duty there is no monetary gain as compared to a trustee breaching his fiduciary duty to an estate.

CHAIRMAN GROSFIELD questioned what the penalty would be for a breach of fiduciary.

Mr. Petesch commented that you would have to repay the breach. The state wasn't out any money. He was moonlighting and using knowledge. How do you put a price on knowledge?

CHAIRMAN GROSFIELD stated that both bills deal in penalties of \$50 to \$1000 fines. That would be a penalty which would be available.

Mr. Argenbright commented that his experience as State Superintendent was that you had very knowledgeable people who would get a federal grant or have an area of expertise and then would do consulting on the side. He believes it would take a lot of effort to give people advisory opinions because this happens quite frequently.

SENATOR NELSON stated a lot of this would be found out after the fact.

Mr. Jacobson commented that is where education and providing advisory opinions would help. Once people are sensitized that they may have a problem and are then provided with the opportunity to find out what the conflicts may be, you have solved part of the problem.

Mr. Petesch stated that ethics concerns vary from agency to agency. He has had to deal with an egregious situation one time. He gave the individual a short notice to have his resignation on his desk or he would be fired. He advised him that he could pursue wrongful discharge if he felt he had a case. There are different methodologies and no guidelines for the administrators to act.

Mr. Jacobson stated that Mr. Seacat didn't tell him what the 30 violations within the last year have been. The violations were where there couldn't be any prosecution or anything done but he felt there was a significant need for ethics reform. On the surface we don't see many examples of problems. You have to have some sort of due process as well as confidentiality. People must be protected against malicious prosecution. The unfortunate

circumstance is that it takes money to handle ethics enforcement. If this is handled on a piecemeal basis, you run the risk of being stuck with a real mess.

CHAIRMAN GROSFIELD commented that as it stands there is no requirement for any agency to have a code of ethics.

Mr. Jacobson stated they are all under the umbrella of the statutes, when they get into ticklish situations there is confusion. SB 115 would give them recourse if the situation becomes a matter beyond what can be handled as a personnel matter. They would probably establish this within a personnel process as to what would happen. If they needed to, the complaint could be turned over to the Ethics Commission to decide.

CHAIRMAN GROSFIELD stated that if the Ethics Commission were to find against the person that person would appeal anyway.

Mr. Jacobson stated it could be appealed, but it would provide a major safeguard of protection against a wrongful discharge case. If the Ethics Commission were to make a finding that the person ought to be dismissed and be fined, it could still be appealed to the district court in a MAPA proceeding. The only thing they would do would be to determine whether or not there was some improper aspect of the procedure.

SENATOR BARTLETT commented that the court's role is much more restricted than if he were taking the case directly into district court. The court has to take the record which came out of the administrative procedure and they cannot go beyond that. They just look at whether the procedural process was followed.

Mr. Jacobson stated that without an administrative process, in a court proceeding you would end up with two to three years of discovery. In Flathead County you cannot get a court date for a civil action until spring of 96. This would fester for a long time before a ruling was handed down.

SENATOR ECK stated she would have a problem expanding criminal law to cover everything they had been talking about.

SENATOR BAER questioned what the deterrent would be without penalties.

SENATOR NELSON stated that every agency should have an ethical code to follow. If this was developed within the agency, that would be a beginning. People would be made knowledgeable of what could or couldn't be done and this may stop some of the problems.

SENATOR BAER commented that the agency chief, or whoever he would appoint, would be in charge of learning the ethics code and being there in an advisory position for the rest of the staff. That should not entail a costly process.

SENATOR BARTLETT stated that she preferred having the Personnel Division establish an overall guideline for all state agencies so that they all were operating on the same standards of conduct in this area. It should cover situations unique to the specific agency. It should be consistent for all state employees regardless of which agency they worked for. The university system would be outside of that. There would need to be a requirement that the university system would have the Commissioner's Office or whoever would be in educational governance would establish that for all the units.

CHAIRMAN GROSFIELD suggested that the Department of Administration could develop all the rules which all agencies would be required to adopt. The rules per agency may require some changes from the model rules to deal with their unique situation. The model rules would be based on the statutory framework which we have regarding ethics. He wasn't sure whether the agencies should handle advisory opinions.

SENATOR BARTLETT commented she would see this dealing with different categories of people and what may fit with one group procedurally won't necessarily procedurally fit with another. Public officers and statewide officials would be one group. Legislators are a group. Public employees would involve some consideration of high level versus all others. Local government officers would be a group and employees would be a group. Public employees would have the avenue of the Personnel Division and the adoption of the model rules. The rules of conduct could apply to public officers but problems in this area would be different from other public employees.

CHAIRMAN GROSFIELD commented if the governor or the secretary of state had a question about some activity, they would be able to go to their chief attorney for legal advice. That would be the same for any agency.

Mr. Petesch stated the problem would be that the attorney would be hired by that person. If he is told what he doesn't want to hear, there may be a problem.

Mr. Jacobson commented that another problem would be the ticklish situations. There are state employees who have political stripes as well as many who don't. When there is a change in administration, the first thing the new administration wants to do is eliminate the pockets of resistance. One way this can be done is by identifying different things to eliminate people. Departments can be combined or ethics violations could be found to shame or eliminate them. The Department of Personnel would be staffed with people who think the same way as the administration. Then you have a political monster. This may only happen every 20 years, but when it does happen there is a very ugly model out there.

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SENATOR BARTLETT suggested having the Personnel Department fulfill a part of the education function and removing the need for additional staff to do that which would thereby reduce the fiscal note. That is not enforcement. Enforcement needs to be addressed.

CHAIRMAN GROSFIELD asked about advisory opinions.

SENATOR BARTLETT stated it would be ideal if they could be handled within existing departmental structures; however, some of the departments are very small. There are people in the same department who have strong personality conflicts. It gets a little close to home.

SENATOR ECK stated she received a good letter from someone from the military department who was complaining that within parts of state government you have a group of people who ignore good ethical principles. That also happens within the legislature as well.

CHAIRMAN GROSFIELD stated that if there is a good educational function, it should take care of a good percentage of the need for advisory opinions. If we also have an ethical code for reference, the employee could go to the Attorney General's Office for advice. This would address the problem of the attorney being in the same agency as the person seeking advice.

SENATOR BARTLETT commented that there needs to be an outside enforcement mechanism for the serious issues and possibly have the Personnel Division adopt model rules for all of state government except the university system. This would provide for consistency across agencies. If there is a place identified to go for advisory opinions and to lodge complaints which is handled across agencies and across levels of employment, this will lead to consistency because the same set of people would be working in the area and developing a record.

SENATOR ECK stated that what is being suggested is that we could take care of most of the issues within the legislature and within the agencies. The number of referrals to a state commission, whether we have a joint commission or not, would be fewer and the costs would be less.

SENATOR NELSON commented we could have a hotline.

CHAIRMAN GROSFIELD clarified that he senses everyone is concerned about the fiscal note. SENATOR BARTLETT proposed a way to take care of part of the problem within current structure of government and budget.

SENATOR BARTLETT commented she wasn't sure that the Personnel Division would agree with her in terms of current budget.

SENATOR ECK commented that she was sure that ethics is already a part of their mission. They do handle some training.

SENATOR BARTLETT commented this would not be a simple rulemaking process. They would have to devote staff resources to developing these kinds of rules. That means taking them away from other functions which they are charged with doing. They may need a half time attorney as well.

CHAIRMAN GROSFIELD asked if the legislature should be handled by the Personnel Division, the Commissioner, or Legislative Council?

SENATOR BARTLETT commented that there are real separation of powers issues and this would need to stay within the legislative structure.

SENATOR BAER stated that the legislature's appointed respective committees could handle ethics for the legislature. If they feel there is a severe violation, they could turn the problem over to the Attorney General. This could be handled very prudently in the respective legislative committees.

SENATOR NELSON commented that perhaps a joint House/Senate Ethic Committee could be on call.

CHAIRMAN GROSFIELD believed that there would be a question which might involve both houses. This could be set up to include an eight committee person in the House and a six or eight person committee in the Senate. This would be like the Joint Rules Committee. Would it be necessary to have a separate Ethics Committee or could the Rules Committee handle this?

SENATOR BARTLETT commented that the Rules Committee as currently structured, would not be acceptable as an ethics committee. It is and should be partisan.

SENATOR GROSFIELD clarified that the committee is interested in further addressing education within current budget as much as possible in terms of the Department of Administration Personnel Division developing model rules which all agencies would be required to adopt in some form and develop informational pamphlets. It has been suggested that the legislature have standing ethics committees in both Houses which would do the same thing for the legislature.

SENATOR NELSON stated she was comfortable with that. Regarding the legislature, she doesn't see the need for a separate group in the House and a separate group in the Senate.

SENATOR BAER commented it could be joint with half the people appointed by respective majorities and the other half appointed by respective minorities.

CHAIRMAN GROSFIELD referred to the filing of disclosure statements, the timing, the level of disclosure as well as the content. Elected officials currently report on the form provided by the Commissioner. Current law is the least restrictive. The form sent out by the Commissioner might go beyond the authority in the current law. This form has been around for a long time. SB 136 does not deal with disclosure. SB 115 deals with a significant amount of disclosure.

SENATOR NELSON commented she believed people did not mind stating where their money came from; however, they sure do not want to get into specific amounts.

SENATOR BAER agreed and stated that current law is adequate. Perhaps the Commissioner could work on the form to conform with current law. This is a big thing for most people.

CHAIRMAN GROSFIELD commented that in SB 115 the disclosure went to high level employees as well as boards and commissions and all elected officials. He believed there to be a real policy issue as to whether anyone would serve on a board with all the disclosure requirements.

SENATOR ECK questioned if people would mind disclosing if the amounts were left out. She believed the important part would be the nature of the person's holdings and the source of their income instead of the amount.

CHAIRMAN GROSFIELD questioned how much information is needed. What is the purpose of this information? If he owned \$1100 of IBM stock, which would be an insignificant percent of IBM and also owned \$1100 of Jack's Conoco, which happened to be 25% of the business, there would be a different implication applied to each \$1100 holding. Are we only looking at majority interests?

SENATOR BARTLETT commented they may not care if it is IBM; however, they may care about Montana Power, Micron, or a canola plant.

SENATOR ECK commented if an attorney had 50% of his or her income from Burlington Northern that should be reported.

SENATOR BAER suggested things which would not directly or significantly affect the membership in a profession, occupation or class could also be used for disclosure. If the person does not significantly own something which could be affected by way of his or her actions, it should not be included in the disclosure.

SENATOR BISHOP asked Mr. Argenbright how many people looked at the disclosure statements in the last year.

Mr. Argenbright stated it would be less than five from his personal knowledge. He discussed this with his staff and they

commented that the press looks at the disclosure statements when they are due.

Mr. Jacobson stated the reporting statements sensitize people toward the potential conflicts of interest. Securities can be handled two ways. They could be reported by percentage of ownership in a business or by amount of your holdings. If you have \$200,000 to \$300,000 of IBM stock and the IBM representative testifies on some legislation, he probably would get your attention. The way to eliminate the things which really do not matter is to determine either a dollar amount or a percentage of your income and also a percentage of ownership of the business. Using words like "substantial" can be difficult to interpret. That is why straight dollar amounts are helpful.

SENATOR BAER stated the need to report in conjunction with the duty to disclose a potential conflict of interest goes hand in hand. The duty of financial disclosure up front should probably be lessened because of the duty to later disclose if a conflict arises.

SENATOR ECK stated the advantage of disclosing up front is that it makes you think about your conflicts. It is also out there on the record.

CHAIRMAN GROSFIELD stated the current form which Mr. Argenbright has is filed after election once every two years. An investor who is trading the market would have a portfolio which changed daily. To state that it needs to be updated as it changes, would be very burdensome to someone who makes his living that way. On the other hand, once every two years may have no relationship to what you may own during a special session.

SENATOR ECK stated that if a benefit was passed to some industry and then legislators bought their stock there would be a problem.

CHAIRMAN GROSFIELD said that would refer to class again. Most of the legislation affects classes instead of specific individuals.

SENATOR ECK commented that when she spoke to Judy Browning she did not agree with the decision not to disclose the spouse's holdings.

SENATOR BAER commented he has a problem with disclosures prior to a conflict situation arising. It should be kept to a minimum. If the legislator becomes involved in a situation, they should know if there is a possible conflict and disclose at that time.

CHAIRMAN GROSFIELD asked if the current form offends him.

SENATOR BAER stated he had reservations. He filled it out as requested but had to call for some guidance. Anything beyond that form would be a problem.

SENATOR BISHOP asked how the disclosure part of SB 115 was developed.

SENATOR ECK commented it came out of the model rule.

Mr. Jacobson stated they worked with the Model Act. It has extensive reporting requirements. The theory is that if you are a public official, you show all to the public. They backed off considerably but did leave in a fair amount. One person on the commission was very adamant about disclosure and was persuasive to other members. The commission had extensive discussion as to right of privacy versus public right to know. The press treats anything a person does as public information. A public official has waived his defenses against the press. What it comes down to is identifying your personal interests.

CHAIRMAN GROSFIELD asked SENATOR NELSON if the current form seems to be adequate?

SENATOR NELSON felt the form was too "nosey". It asks for too many specifics which is probably more than people want to know.

CHAIRMAN GROSFIELD asked about disclosure for board members and high level public employees. Currently only elected officials are required to disclose. He questioned a disclosure form for directors.

SENATOR ECK commented that during the last administration the governor might have been better off by finding out more before he appointed people. Most governors do that. There are always complaints about high level appointees, whether they are appointed for their ability or because of their connections.

CHAIRMAN GROSFIELD agreed but also believed that the governor paid the consequences for not getting better disclosure. He would not have a problem using the same disclosure form for high level state employees as is used by legislators. He was not sure where they should be stored.

SENATOR ECK stated that quasi-judicial boards are like legislators.

SENATOR BARTLETT stated that department directors go through a confirmation process. That doesn't always come up with enough information. She has some hesitation in this area because there can be difficulty in getting people to accept those jobs. The more that is added in, the more disincentive is built into taking the office. Certain boards should make disclosures because they do make policymaking decisions.

CHAIRMAN GROSFIELD clarified that as far as disclosure, everyone seemed to be comfortable with the current statement for legislators except clarification is needed. He questioned if the \$1000 limit should be raised?

SENATOR BARTLETT commented she would hate to see that raised because it would be seen as a retreat from the level of current ethics.

CHAIRMAN GROSFIELD asked the committee if they were interested in disclosure for boards and commissions.

SENATOR NELSON stated the same disclosure form as legislators have would not be anymore burdensome on them than it is on legislators.

SENATOR BAER agreed with using the same disclosure form.

CHAIRMAN GROSFIELD asked about disclosure for political appointees which would be director and associate director.

Mr. Petesch commented they were classified under statute as exempt positions within an agency.

CHAIRMAN GROSFIELD stated they should come up with a tool to help the State Ad Committee make a decision and also the tool wherein the person would disclose up front.

JUDICIARY SUBCOMMITTEE — ETHICS

DATE _____

2/9/95

Attach to each day's minutes

ISSUES IDENTIFIED FOR ETHICS SUBCOMMITTEE

- (1) Education function concerning ethics in government.
- (2) Gifts:
 - (a) 5-7-208(5) requires \$25 for purposes of lobbying
-- \$25 amount was established in 1980;
 - (b) add criteria in 2-2-104(1)(b)(i)? (gifts that tend to improperly influence)
- (3) Disclosure statements: filing and timing.
- (4) District officials status should be clarified: state office elected from a district or county/state subdivision offices.
- (5) Nepotism - clarify status of pages, other legislative session staff, elections judges, etc.
- (6) Clarify "Gain of another" page 8, line 13. Clarify exemption on lines 14 and 15. Clarify lines 26 and 27.
- (7) "Conflict of interest" disclose conflict and vote or not vote.
- (8) Level of financial disclosure. Content -- applicability (who is required to file). Current law v. political practices form v. SB 115
- (9) Role of commission: education, advisory opinions, enforcement.

Activity or action	SB 115	Current Law 2-2-101 et seq	SB 136
General conflict of interest prohibitions in decisions making actions	Section 7 prohibits voting or participation when person has direct foreseeable pecuniary interests in matter. Excludes matters in which person is a member of a class of people. Leg. creates its own rules.	2-2-112 provides guidelines for leg to not participate when matter directly affects personal or financial interest. Other officials prohibited from participating in matters if they have financial interest in matter. 23-7-203 prohibits members of the legislative liaison to state lottery from owing gambling devices.	Strict prohibition from participating in any matter that legislator or family to fourth degree in has financial interest in. Legislature creates ethics committees to deal with conflict of interest matters. Section 3.
Use of office title for personal gain. Section	Section 8 (6) Prohibits the use of title or prestige of office to obtain anything of value.	Legislators may not use office to obtain employment or contract. 2-2-111(2)	No change from existing law.
Prohibition from state employee from receiving two salaries at the same time for being a legislator and state employment	Does not address this issue. No change from existing law.	No specific provision. Handled by the agencies individually as a personnel matter. State law required all employers permit employees to attend leg	Prohibits double dipping of public employee serving in the leg. Does not address federal employees. Section 1.
Use of confidential information for personal gain	Generally prohibited in matters such as fraud or collusion in public contract or receipt of gifts. Section 8 and 9	Prohibits use of confidential info for person gain 2-2-103(1)(a)	No change from existing law.
Personal interest in public in Contracts	Extensive prohibition found in Section 9, exceptions made for competitive bid or auction bidding	Similar provisions found in 2-2-201 et seq.	No change from existing law.
Nepotism	Very similar to existing law. Section 4.	Prohibition against hiring or promoting the family members to the 4 consiquinty. Some exclusions. Section 2-2-301 et seq	No change from existing law.
Prohibitions against gifts from lobbyists, and others	Prohibits gifts or meals over \$25 if part of influencing a vote (generally prohibit lobbyist from making gifts over 25 per occasion). Can not receive "anything of value" that can be construed as influencing an official act. Section 8	Prohibits substantial gifts that would tend to improperly influence a reasonable person. 2-2-104	No change from existing law.

SENATE HODGKINS COMMITTEE
 CLARENCE NO. 2
 DATE 2/9/95
 SB 115
 SB 136

Activity or action	SB 115	Current Law 2-2-101 et seq	SB 136
Outside employment restrictions	Limitations on public contracts. Section 9. Prohibits or limits involvement in matters of representing others before state agencies. Section 6. Limits regulating one's own business. Section 7.	Similar to SB 115. Contracts 2-2-201, Prohibitions on representation 2-2-121(2)(c)(d), limits regulating one's own business 2-2-121(2)(b)	Adds legislators to these restrictions regarding representing others. Section 4.
Misuse of office for personal or political purposes	Prohibits use of office for personal or political activities unless incidental to function of office. Certain exception may permit limited non-governmental activities. Permits legislative exceptions established in joint rule. Section 5.	May not use state office for private business purposes. 2-2-121. Public employees may not campaign while on the job. 13-35-226.	Prohibits use of office for political purposes unless it is incidental to the office. Excludes legislators, Section 4. This section adds to existing law.
Limitation of post-employment activities	Creates limitations in dealing with former agency or gov. depending on the level of employment. Post-employment restrictions generally last 1 year. Legislators prohibited from lobbying for one year after the expiration of their term of office. Section 11	Officer or employee should not get involved with matter he was directly involved with during employment for months following employment. 2-2-105(3)	Same as existing law but specifies 12 month period to not having any involvement
Reporting of financial interests	Requires extensive reporting requirements for state public officials, high level employees, public member boards, consultants to contacts, and candidates. Sections 13 - 15 Gifts with an aggregate value over \$500 would have to be reported. Would not report meals etc received from lobbyists.	Requires reporting of limited business information by state public officials and their families 5-7-213. Permits voluntary conflict of interest disclosures 2-2-131. Lobbyist Principle required to report certain expenditures of public officials 5-7-208.	No change from existing law.

Activity or action	SB 115	Current Law 2-2-101 et seq	SB 136
Restrictions against representing others before gov. agencies	Prohibits representing anyone before other state agencies by public officials and high level public employees. Other employees may not represent another before their own agency. Legislators would be restricted from representing others before state agencies during session. Legislators could do constituent representation. Section 6	Prohibits state employees and officers from representing others for a fee before their own or a contingent fee other state agencies. 121(1)(c)(d)	Adds legislators to this restriction. Section 4.
Education of regarding matters of ethical conduct.	Provides for establishing an education program for state officers and employees. Section 33.	No provision for education	No change from existing law.
Ethics advisory opinions.	Provides for ethics advisory opinions by ethics commission. Provides for confidentiality for informal opinions. Section 26	No advisory opinions available because section 2-2-132 found unconstitutional.	No change from existing law.
Enforcement provisions.	Provides for the Commissioner of Campaign Practices to investigate and prosecute ethics violation complaints. The Ethics Commission would adjudicate the cases and issue orders. Criminal matters referred to county attorney or attorney general. Sections 36-44	Enforcement preformed by county attorney using trust law 72-34-105 as the basis for initiating an action. Section 2-2-103. Criminal matters handled by county attorney or attorney general.	Leaves existing law as is but adds criminal violation for violations of 2-2-121. Provides civil penalties but does not specify if that is tied to county attorney prosecution or agency action.
Sanctions for violations.	Penalties include civil fines up to \$2,000 per offence and recommendations for disciplinary action by agency or appropriate authority. Also permits loss of pension and other employment benefits upon conviction of office related felony. Section 44, 47 No change in criminal violations.	Violation of 72-34-105 would probable provide that the benefit of the gain would have to be returned or the contract would be voided. Criminal statutes would result in fine or imprisonment.	Civil penalty between \$50 to \$1,000. Criminal penalty between \$50 to \$1,000, 6 mo jail time. Section 4. Adds penalties for local government ethics violations.

DATE 1/10
SB 115
SB 136

ROLL CALL

SENATE COMMITTEE JUDICIARY SUBCOMMITTEE DATE 2/11/95
ETHICS SB 115 SB 136

[illegible]

Attach to each day's minutes

Section A. Section 2-2-102, MCA, is amended to read:

"2-2-102. Definitions. As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(3) "Employee" means any temporary or permanent employee:

(a) of the state or any subdivision thereof of the state; or member of the judiciary, including

(b) a member of a board, commission, or committee; and

(c) except a legislator and an employee under contract to the state.

(4) "Financial interest" means an interest held by an individual, ~~his~~ the individual's spouse, or minor children which is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real or personal property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

(6) "Public officer" includes any state officer ~~except a legislator or member of the judiciary~~ or any elected officer of any subdivision of the state.

(7) (a) "State agency" includes:

(i) the state;

(ii) the legislature and its committees;

(iii) all executive departments, boards, commissions, committees, bureaus, and offices;

(iv) the university system; and

(v) all independent commissions and other establishments of the state government except the courts.

(b) The term does not include the judicial branch.

(8) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102."

{ Internal References to 2-2-102:

5-11-203 }

Section B. Section 2-18-102, MCA, is amended to read:

"2-18-102. Personnel administration -- general policy setting. (1) Except as otherwise provided by law or collective bargaining agreement, the department shall:

(a) encourage and exercise leadership in the development of effective personnel administration within the several agencies in the state and make available the facilities of the department to this end;

(b) foster and develop programs for recruitment and selection of capable persons for permanent, seasonal, temporary, and other types of positions and for the improvement of employee effectiveness, including training, safety, health, counseling, welfare, discipline, grievances, and evaluation for productivity and retention in permanent status;

(c) foster, develop, and promote job sharing in agencies;

(d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the policies made ~~thereunder~~ under parts 1 and 2 and report the findings and recommendations to the governor;

(e) establish policies, procedures, and forms for the maintenance of records of all employees in the state service;

(f) apply and carry out parts 1 and 2 and the policies ~~thereunder~~ under parts 1 and 2 and perform any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

(2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the state service that

effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided that ~~such~~ the agencies remain in compliance with policies, procedures, timetables, and standards established by the department.

(3) The department shall develop and issue personnel policies for the state. Adequate public notice ~~shall~~ must be given to all interested parties of proposed changes or additions to the personnel policies before the date they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions to the personnel policies before the date they are to take effect.

(4) The department shall develop model rules of conduct for all state employees based upon the provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the provisions of Title 2, chapter 2."

{Internal References to 2-18-102: None.}

Section C. Section 5-7-213, MCA, is amended to read:

"5-7-213. Disclosure by elected officials. (1)(a) Prior to December 15 of each even-numbered year, each elected official, ~~ex~~ official-elect, member of a quasi-judicial board, department director, and person occupying a position or division administrator or higher shall file with the commissioner a business disclosure statement on a form provided by the commissioner.

(2) The statement shall must provide the following

information:

(a) the name, address, and type of business of ~~such the~~ individual and each member of ~~such the~~ individual's immediate family;

(b) each present or past employment from which benefits, including retirement benefits are currently received by the individual and each member of the individual's immediate family;

(c) each business, firm, corporation, partnership, other business or professional entity or trust in which the individual or a member of the individual's immediate family hold an interest the value of which is greater than \$1000; and

(d) all real property other than a personal, residence, in ~~which~~ which the individual or the individual's immediate family hold an interest, the value of which is greater than \$1000. Real property may be described by general description. For this purpose ~~"immediate family" includes the individual's spouse and minor children only.~~

(2) ~~No such~~ An individual may assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until ~~such the~~ statement has been filed.

(3) The commissioner shall make ~~such the~~ business disclosure statements available to any individual upon request.

(4) For purposes of this section, "immediate family" means the individual's spouse and minor children."

{Internal References to 5-7-213: None.}

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN SENATOR LORENTS GROSFIELD, on
February 11, 1995, at 12:00 PM

ROLL CALL

Members Present:

Sen. Lorents Grosfield Chair (R)
Sen. Larry L. Baer (R)
Sen. Sue Bartlett (D)
Sen. Al Bishop, (R)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Greg Petesch, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Subcommittee Business Summary:

Meeting: SB 115, SB 136

Mr. Petesch handed out EXHIBIT 1. He made the changes which were ambiguous in current law. The second sheet refers to the Department of Administration Personnel Division developing model rules of conduct and providing employees with a pamphlet summarizing the ethics code. That is an amendment to an existing provision of law which is new (4). The last section deals with the revision of the disclosure requirements to conform the statute with existing form.

CHAIRMAN GROSFIELD referring to page 1, stated that part of the definition clarification eliminate the judiciary.

Mr. Petesch explained that it does, but doesn't. He moved the exclusion from public officer to the exclusion from state agency. The reason is that the Constitution provides for a Judicial Standards Commission which is charged with adopting a code of judicial ethics and enforcing it for the judiciary. There would also be a separation of powers problem with trying to enforce statutory ethics provisions on the judiciary. He clarified the constitutional provisions.

CHAIRMAN GROSFIELD referred to Section 2, the department shall provide employees with this pamphlet. We have 14,000 state employees. That would mean a significant cost.

Mr. Petesch commented there certainly would be some cost. The model rules for agencies to adopt will have to be published in the Administrative Register as proposed and then agencies will have to adopt them as part of their organizational rules. Each agency will incur some costs. The cost is \$35 per page in the register and there would be at least 5 pages of the model rule. The second sentence pertains to education of employees. A pamphlet need not be extensive and could be handed out to employees as they are newly hired. All current employees would be provided a copy.

SENATOR BARTLETT asked if there should be language to include that the department shall provide training to employees during orientation or regular professional development courses offered periodically.

Mr. Petesch commented the language states they "can" provide training. Perhaps this should be mandated. Section B, (1) (b) talks about foster and development of programs for training, safety, health, counseling, welfare, discipline, etc. That is where the existing training program is statutorily authorized. By adding model rules of conduct, they could certainly handle training under existing authority.

SENATOR ECK questioned providing for informal advisory opinions under the personnel section.

Mr. Petesch commented the committee had not discussed assigning that to the personnel division.

SENATOR BARTLETT stated she would add explicit language in Section B referring to ethical guidelines so it is clear that this could be added to their ongoing program.

Mr. Petesch commented that in Section C they took the existing statute which requires disclosure by elected officials and added "members of quasi-judicial board, department director, and person occupying a position of division administrator or higher" would cover high level employees.

CHAIRMAN GROSFIELD questioned who should be placed under that umbrella.

Mr. Jacobson stated that when the Ethics Commission dealt with this issue, it had a very difficult time determining how low to go because there are certain administrators who do not set policy. They chose the language "grade 18 or higher designated by the agency as substantial policymaking". Using the words "director" or "deputy director" may work and then let the agency decide.

CHAIRMAN GROSFIELD commented that deputy director and director are political appointees. As you get to division administrator, you would be talking about someone who has been with the state for a long time. After they have been working for 18 years or so, they may have a problem with having to disclose and may think twice about whether or not they want to continue in that job. They may have some family holdings that could present a problem.

Mr. Petesch commented this would go to "each individual and each member of the individual's immediate family". Immediate family would be spouse and minor children. A thought to consider regarding division administrator is that some agencies have eliminated what they call "deputy director". In some reorganizations, political appointees are no longer called deputy directors. Revenue has two or three people this would cover. With the size of some of the agencies which will be created this session, there will be more deputy directors than there currently are.

CHAIRMAN GROSFIELD asked who would be included as "political appointee".

SENATOR BARTLETT commented this would be "exempt staff".

Mr. Petesch stated those people would not always be political appointees. There is a list of exempt positions. Each agency then gets four who would be included in the list. Many of the exempt positions are used to fill hard to retain positions rather than political appointee positions.

SENATOR ECK suggested using "department director and those that he or she would designate who make public policy." This would be different in each department.

CHAIRMAN GROSFIELD questioned how a department director would deal with that type of language. If there was an ethics violation by a bureau chief who was not designated as a policy maker, it would then come back as a problem for the director. He would have violated the ethics rule by not requiring a disclosure statement. Department directors may feel that they would have to cover everyone.

Mr. Jacobson commented that the Ethics Commission felt that the director should be covered and also high level exempt staff. For example, there are a few people in the governor's office and attorney general's office who need to be covered. High level would mean a grade 18 and higher in the various elected official's offices. Specifically, this would be getting at people like Judy Browning, Doug Mitchell, Dennis Taylor, Dave Hunter, those are the types of people who would be required to file disclosure statements. There is a good argument to be made to include the administrators. The Ethics Commission decided they should be designated by the agency and approved by the

Commission, this would cover the concern with the director's responsibility to designate policymakers.

SENATOR BARTLETT questioned how strongly the Commission members felt that other employees beyond department directors needed to file disclosure statements.

Mr. Jacobson stated the Commission had mixed feelings about how far this should reach.

CHAIRMAN GROSFIELD stated the options would be: (1) department director, or (2) high level exempt staff as designated by the director or public officer.

The consensus was to use the term "director".

CHAIRMAN GROSFIELD commented another issue would be the timing. Currently this is handled prior to December 15 and refers to officials elect. What about candidates? Do we want to know this before the election?

SENATOR ECK stated the person who is filing ought to know ahead of time what he needs to disclose. Also, that might be the time the public may want to look at it as well.

CHAIRMAN GROSFIELD commented he remembered winning the election and then later receiving the form in the mail which he knew nothing about. It could be required along with filing to run for office. It gets a little confusing for a member of a quasi-judicial board. Should this be required at the time they are nominated by the governor.

Mr. Argenbright commented he would think candidates should probably disclose upon filing for office.

SENATOR BARTLETT stated she would prefer to see this handled similarly to the filing made with the Commissioner of Political Practices which is five days after becoming a candidate.

Mr. Argenbright stated they require filing with his office within five days of expending or receiving money on a campaign. Once they receive the form from the candidate they send the packet of information dealing with requirements for reporting.

SENATOR ECK stated the disclosure form could be given when the person files with the secretary of state.

SENATOR BAER commented it might be best to leave this the way it is currently handled for elected officials. A candidate is not an elected official. He believed it would be best to leave the mechanism in place the way it is now for candidates. He doesn't see a conflict.

SENATOR BISHOP commented it would give voters a chance to eliminate a conflict if they have one.

SENATOR BAER stated he would not object to making his disclosure at the time he filed for office.

The committee decided to leave the disclosure at the time of filing for office.

CHAIRMAN GROSFIELD commented that once the person is elected, he or she would disclose on December 15, every two years.

Mr. Petesch stated there should be a provision which would state that a person is not required to file more than one form in two years.

CHAIRMAN GROSFIELD next questioned the procedure for board members and department directors.

SENATOR ECK believed disclosure should be required when an individual is nominated.

Mr. Petesch commented that directors do not apply because they are patronage positions.

SENATOR BARTLETT believed disclosing should occur when they assumed the duties of the position. The governor appoints people to high level boards when the legislature is not in session. They could have served 18 months or two years before their confirmation is submitted to the Senate.

Mr. Petesch commented it could read "for those positions at the earlier of nomination or assumption of office." This would apply to quasi-judicial boards and department directors. This would be biannual filing for everyone. Referring to the following page, Mr. Petesch commented that he put the reporting requirements on the existing form into a narrative form. Real property allowed for general description rather than the legal description.

SENATOR BISHOP asked how the committee felt about the \$1,000 threshold.

SENATOR BARTLETT commented she would hate to see the committee retreat from the current standard of ethics. Raising the threshold may send the wrong signal.

Mr. Petesch stated that 5-7-213(2)(b) referred to current income regardless of whether it was present or past employment.

SENATOR ECK commented a source of income may not be from employment. Her income is primarily from investments and rentals.

Mr. Petesch stated that rentals are covered in (c).

Mr. Argenbright commented that this form is considered a business disclosure and would not include current salary.

Mr. Petesch commented that (b) as written would require the person to report that salary but not the amount. If you are a public employee, that amount is public information.

SENATOR BARTLETT stated that if this language is used, the commissioner should rewrite the instructions for the form because this is confusing language.

SENATOR ECK commented that there is no mention of loans.

CHAIRMAN GROSFIELD believed the \$1000 threshold was low.

Mr. Petesch commented that the \$1000 has never been in statute. It has always been in the disclosure form. A former commissioner believed that "ownership interest" or "financial interest" meant \$1000. The form was adopted in 1979.

CHAIRMAN GROSFIELD commented that the number could be raised to \$5,000 or \$10,000 but to also add a check off system as follows: (1) would be over \$5,000; (2) would be over 20% of expected income for the next year; and (3) 20% or more of the assets of the company. Using this concept would make the form more meaningful.

SENATOR ECK stated SB 115, page 16, lines 14-20, addressed a similar concept. Page 17 deals with debts and loans which were set at \$1,000. She felt this should be changed to \$10,000.

Mr. Jacobson agreed that raising the threshold to \$10,000 and indicating the percentage of ownership would drop out the minor things. SB 115 is much more restrictive.

SENATOR BAER commented he did not wish to include any further reporting than in current requirements. He doesn't have a problem with reporting percentages.

CHAIRMAN GROSFIELD clarified they would leave the threshold at \$10,000, indicate whether the interest accounted for 20% of expected annual income, or the interest is in excess of 20% of the value of the business. He then asked the committee their position on loans. In a loan situation, the person who was owed the money would have a hold on the person owing the money.

SENATORS BAER and NELSON would rather not address loans.

SENATOR ECK commented they could state "unsecured" loans.

{Tape: 1; Side: B}

Mike Pichette commented that when using the term fiduciary in a conflict of interest situation, this should not be limited to a for-profit association. On the appointment to judicial boards if someone is an officer of some other interest group which is non-profit, it may raise a conflict situation.

SENATOR ECK suggested using the term corporation.

Mr. Petesch commented it would then read, "for each entity not already listed to disclose whether the individual or a member of the individual's immediate family is a director of a for-profit or non-profit corporation."

CHAIRMAN GROSFIELD asked if director went far enough.

Mr. Petesch suggested using the term "officer".

CHAIRMAN GROSFIELD asked what current law would be regarding gifts.

Mr. Petesch commented that Section 2-2-104(1)(b)(i) used the words "tend to improperly influence". Subsection (b) used the words "substantial value or substantial economic benefit tantamount to a gift:".

CHAIRMAN GROSFIELD commented that lobbyists disclose anything over \$25. He thought that could be raised to \$50.

Mr. Jacobson commented that the Ethics Commission had a tough time with gifts. Their range was \$100 to \$0. The \$25 was keyed off the lobbyists statute. To someone who has significant holdings a \$100 ticket to a game would not mean much. To a person barely getting by, this would be more significant. They used the words "anything of value" and gave it a dollar amount.

CHAIRMAN GROSFIELD turned to the section on nepotism.

SENATOR BAER commented if they lessened the reach of nepotism, they would be diluting the current standard of ethics.

CHAIRMAN GROSFIELD stated they had earlier agreed to exempt pages, other legislative staff, and election judges.

Mr. Petesch commented the current statute has a list of exempted positions. These would be added.

SENATOR ECK felt there would be criticism of exempting legislative staff.

SENATOR NELSON commented there was a bill in the last session which gave a hiring preference to people who had served during the legislative session.

Mr. Petesch stated that was the RIF pool. It gave a rehiring preference to session staff. That was removed in the special session.

SENATOR BAER commented they exempted people who were relatives of school employees if the entire board unanimously voted to approve it. That is questionable as well.

CHAIRMAN GROSFIELD referred to item no. 4 on issues list -- District officials status should be clarified: state office elected from a district or county/state subdivision offices.

Mr. Petesch explained there were two issues involved. The first was to define district office. That was necessary for SB 115 which referred to a statewide district. The question then arose whether this should be applied to local subdivisions, i.e., county commissioner or conservation districts.

CHAIRMAN GROSFIELD questioned whether they wanted to include counties.

Mr. Petesch stated this dealt with SB 115 explicitly.

SENATOR BAER commented there is existing statute on this. His bill added in disciplinary action and a civil penalty for people who violate ethical standards. He changed the gender language and added that a person on the county level shall disclose and eliminate the interest creating the appearance of impropriety. The last sentence is what they need to deal with. Should they fully disclose or fully disclose and eliminate. There is no other application to local government. It should be considered in our code as they currently are.

CHAIRMAN GROSFIELD asked if SB 115 covered local government.

Mr. Jacobson stated it did not. He prepared amendments which would (1) permit them to file voluntary disclosure statements which is under current law and (2) would have the Ethics Commission suggest or provide model ordinances for the local governments and let them adopt these at their will. This would give them local control and would not dictate to them.

SENATOR BAER felt attention should be given to local government. There are good local governments as well as very corrupt local governments. If we leave this at voluntary disclosure, why have disclosure at all. If there is a situation which creates an appearance of impropriety, they should be required to disclose anything which applies to that situation. Eliminating it might be a little to strong. If we do not have enforcement on a state level, it will not be enforced at all.

CHAIRMAN GROSFIELD commented this was 2-2-131.

SENATOR NELSON stated she agreed that this needs more force. County officials would like to have some guidelines. They would like to go to the law book and see what is expected of them.

CHAIRMAN GROSFIELD commented that public officer or public employee is everyone except a legislator. The requirement is that they would have to file a disclosure in writing to the secretary of state. He asked Mr. Jacobson if that ever happens.

Mr. Jacobson stated very few disclosure statements are made. The proposed amendment he prepared would put disclosure at the local level and they would file with the clerk and recorder. The biggest problem would be the lack of consensus among local governments. This would include county entities, city entities and school boards. The Commission believed that the way to kill this bill fast would be add local governments. It would require a significant amount of work with those groups to come up with language that would work given the significant differences in their operations.

CHAIRMAN GROSFIELD commented that the current statute also refers to public officers which would include everyone up to department directors.

SENATOR BAER stated that was stricken from his bill. It states: "The member shall disclose and eliminate the interest creating the appearance of impropriety."

Mr. Petesch commented that 2-2-131 as written used the term "financial interest". This deals with awarding of contracts or bids. This is the only place it would have implications as current law provides. This refers to absolute conflict where you have a personal financial interest in awarding a contract or bid.

CHAIRMAN GROSFIELD suggested it should be made mandatory and indicate that that is in fact what it refers to. This would apply to state agencies as well.

Mr. Petesch stated that the public bidding statutes do require abstaining. This is confusing to people.

SENATOR BAER believed that is why it was stricken in the first place because it did create a confusion. They are making reference to many other things which could create the appearance of impropriety.

Mr. Petesch commented SB 136 went far beyond what the former statute was limited to. You had to have an explicit financial interest.

CHAIRMAN GROSFIELD commented SB 115 repeals 2-2-131 and since it is taken care of elsewhere, it would be best to repeal it.

Mr. Petesch commented that quasi-judicial boards do not award contracts but they may award a permit where this would come into play.

SENATOR BAER stated SB 136 does not repeal it. It eliminates it from application to 2-2-125.

Mr. Petesch commented that if they left the definition of financial interest, it should be mandatory.

SENATOR BAER stated it should be mandatory.

CHAIRMAN GROSFIELD clarified that 2-2-131 would be made mandatory and it would explain what it applies to including permits. Since a board member is not a public officer, they should be included.

Mr. Petesch stated the definition of public officer currently would be "elected". The quasi-judicial board members would not be covered because they are not employees nor are they elected.

Mr. Jacobson stated that in SB 115 this is taken care of in different ways as to what can or cannot be done. Disclosure covers that and prohibitions deal with that. If the committee stays with existing law, the committee will have to make things fit.

SENATOR BAER stated that is what should be done instead of just repeal existing law as SB 115 does. The committee only needs to modify existing law to fit the needs. SB 115 seems to be much broader than existing law and it also expands new areas which are not even present in existing law which are burdensome.

SENATOR ECK felt the Ethics Commission which came up with SB 115 spent a lot of time being both specific and broad.

CHAIRMAN GROSFIELD commented that this is a major decision which the committee needs to make. They need to wait until SENATOR BARTLETT is present when they address the issue.

Mr. Jacobson commented that double dipping is something which both bills address.

CHAIRMAN GROSFIELD commented this was addressed in SB 136 on page 2. He stated this only deals with the time that the legislature is in regular or special session.

SENATOR BAER stated they could not ask someone to give up their regular public salary all year to serve in the legislature four months out of the year. This should only apply to the time that they actually serve in the legislature and are away from their regular duties.

CHAIRMAN GROSFIELD questioned if salary only referred to cash or included retirement and medical benefits.

Mr. Petesch stated that salary does not include benefits. When a public employee is elected to a legislative position, the public employee is given the option of retaining their current benefit. In the case of a teacher, they are given the option of maintaining membership in the teachers retirement system and making the contributions which would be made from their legislative position to the teachers retirement system. If they are not a member of the retirement system, they can join PERS and then later convert those benefits to one or the other. The benefit package is clearly covered. The issue on salaries is whether they could use other benefits such as leave time which would include comp time or annual leave. Those are salaried. You are being paid your wage for the time you are absent.

SENATOR BAER commented it was not his intention to reach that far. He did not want to affect benefits. The only thing he wanted to address was the actual paycheck.

Mr. Jacobson stated he put together some language on this. It goes beyond the question of double dipping as a legislator. It would be a new section called "Limitations of public employees receiving compensation from more than one state job activity." It would go on to state that no public employee may receive salaries from holding two separate state employment positions unless those employment activities do not overlap for the hours being compensated. This section does not prohibit an employee from receiving income for the use of accrued annual leave or comp time during the period of overlapping employment. This will not only deal with people serving in the legislature but also agencies which share employees. Another possibility would be an agency wherein an employee would want to work in the legislature during the session on staff, this would prohibit that situation.

CHAIRMAN GROSFIELD stated it would not prohibit the practice, it would just prohibit double dipping.

Mr. Jacobson stated it would not prohibit proofreaders hired by the Legislative Council who come in at night and worked another five or six hours in the evening after completing their state job. This would not prohibit that practice. The only difference would be if a person came in at 4:00 on their agency time. They could do that if they took comp time or annual leave.

Mr. Petesch stated they could incorporate a reference to it in 2-2-104.

CHAIRMAN GROSFIELD stated that was very clear.

SENATOR BARTLETT commented there was some prohibition against having more than one full time equivalent job with the state. It would be limited to 40 hours a week. She thought there might be some labor law violations if the proofreader was not paid overtime for the proofreading job.

Mr. Petesch commented they had interpreted overtime laws to mean that because of the separation of branches and jobs, that that person is not entitled to overtime. It has only happened in a couple of instances and has never been challenged. If they worked in executive branch agencies they are required to pay overtime.

SENATOR BAER stated his only concern was with a person simultaneously holding two jobs, only being at one, and being paid for both.

SENATOR NELSON asked if SENATOR BAER'S problem was because we are dealing with tax dollars.

SENATOR BAER stated if it doesn't involve public funds and public revenues, he has no concern. He is concerned with public money and how it is spent.

Mr. Petesch stated they could not prohibit a private entity from paying someone while attending the legislature. That usually refers to a contractual matter. You can regulate public employment but not private in that regard.

SENATOR ECK commented that it might be disclosed. If a corporation pays a legislator his or her full salary while the person serves in the legislature, maybe that should be disclosed.

Mr. Jacobson stated there were a couple of other things this did not address. People who work for the federal government who are also in the legislature. There are benefits people may be receiving which could be construed as double dipping also. There are exceptions to the Hatch Act.

Mr. Petesch stated that legislators have the option of serving for no salary. A high ranking state employee would be able to serve as a legislator for no salary. No one has ever taken advantage of that. You would only be paid by one entity.

CHAIRMAN GROSFIELD stated they needed to chose a vehicle to use. They could use SB 115 or SB 136 or recommend a substitute bill. His sense is that they have backed off extensively from items in SB 115. Examples being the disclosure, fiscal note, and commission. He believes the committee is looking at something more simple and limited as to subject matter.

SENATOR BISHOP stated that the fiscal impact would not work in this session.

SENATOR BARTLETT stated if they used SB 115 as a vehicle, after committee amendments were adopted a revised fiscal note would be prepared. The new fiscal note should not be a barrier. There are areas which they have not made decisions on which are covered in SB 115 explicitly and covered only implicitly in SB 136. She feels it is premature to make this decision.

SENATOR BISHOP stated SB 115 is a roadblock financially.

Mr. Jacobson stated that he feels very strongly about the work of the Commission. They dealt with the whole package. The enforcement and advisory opinions need to be dealt with and will come with a price tag regardless of what is decided. He has discussed with Commissioner Argenbright the possibility of going with a package which would reduce the cost significantly by having a separate Ethics Commission and letting them deal with the issues of advisory opinions and enforcement. The education side has been put into the Department of Administration Personnel Division. If the committee stays with SB 115 and takes the Commissioner of Campaign Practices out of the enforcement side, the price tag for the fiscal note could be reduced in half. If this does not contain enforcement and advisory opinions, there will be no ethics act.

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CHAIRMAN GROSFIELD commented that they have added in the three or four pages which they started off this meeting with. They have added in the local government section. The issues they have to deal with are: gifts, voting or not voting in conflict situations, advisory opinions, enforcement, and use of public resources to influence political issues.

CHAIRMAN GROSFIELD asked for suggestions on disclosing a conflict and then voting or not voting. The Senate rules state that they must vote on everything. Should that be changed in the situation of a conflict of interest. If defined narrowly, a direct personal conflict would occur rarely. There is also the issue of a public employee legislator voting on an issue which would affect him. It would come down to how personally it affects the legislator as opposed to whether it affects the legislator as a class.

SENATOR BAER stated he had no intent on restricting the farmer who would be voting on an agricultural bill. A teacher is a public employee, and that teacher votes on a bill with the knowledge that most of the funding would be used for employee salary raises. Eighty percent or more of funds are applied in that manner. Public employee legislators should be held to a higher standard of duty than non-public employee legislators. This is a problem. Reality has to be considered. It is a citizen legislature.

CHAIRMAN GROSFIELD commented that while 80% is for salaries, it is not true that 80% of a vote on an educational funding bill is for salary increase. A teacher may be voting on whether they would be voting for more teachers to cover extra students.

SENATOR BARTLETT stated she and SENATOR BAER discussed the difference between the mandatory abstention from voting. If there is a conflict, any legislator would have to abstain from voting. A situation where there is a mandatory disclosure of a conflict and then a voluntary decision on whether or not to vote made by the individual legislator, would require a rules change in the Senate to allow a voluntary abstention if the individual is present when the vote is taking place. They both agreed that a mandatory abstention from voting because of a conflict of interest is not going to meet enough acceptance within the Senate to be approved. There are real concerns about this from other Senators.

SENATOR BISHOP commented on the situation when SENATOR BENEDICT disclosed his conflict of interest during a floor session.

SENATOR BARTLETT responded this went to another issue of when the legislator is a member of a class. When that particular bill came to second reading, it involved a sizeable class. At this time, it seemed appropriate for him to participate on the debate and to vote. He had disclosed. When it went back to committee, the class was narrowed and a much smaller group then voted on it. She was uncomfortable with the fact that he voted on it.

SENATOR BAER stated there would not have been a conflict situation under his bill unless he was a public employee. He questioned whether the disclosure should be voluntary or mandatory.

CHAIRMAN GROSFIELD commented that under current disclosure, SENATOR BENEDICT would have disclosed this conflict upon filing for office. Is that adequate disclosure? He sees a problem with having 25 ranchers get up and disclose during a floor session.

Mr. Petesch stated that under Senate rule, there was no question that SENATOR BENEDICT was required to vote. Rather than creating a new committee to deal with these things, it may be that the disclosure could be made anywhere the vote is being taken and the body could determine whether that person votes or not. In that way, the issue is removed from the individual and left with the body. In a committee, this person may need to vote to have a decision. He has disclosed, if the body makes him vote he has done everything he can do in regard to the conflict situation.

CHAIRMAN GROSFIELD stated that he was uncomfortable with letting the body decide who could vote. He believed partisanship could create problems.

Mike Pichette stated he would like the term "class" clarified. He also referred to amended SB 136, page 3, line 21, regarding the double negative. (This was addressed earlier.)

Mr. Petesch stated that SENATOR BAER'S bill did mention presenting the facts of a conflict situation to a committee.

CHAIRMAN GROSFIELD commented that might work; however, a joint Ethics Committee would not work. If there was a four person Ethics Committee with two from each party. They could then decide whether he could vote or not vote.

SENATOR BAER stated that the legislator could certainly bring this up prior to session. They could look at the bills and see how they would be voting. This should be taken care of prior to third reading.

SENATOR BARTLETT commented the person could disclose the conflict at the second reading stage. The committee would then be signaled that they would need to resolve the situation before the next day's third reading vote.

CHAIRMAN GROSFIELD clarified that current rule states the senator shall vote on everything. That rule could stand unless someone appeals to the Ethics Committee on a specific vote. This would presume that every senator would vote unless this issue is raised. The Ethics Committee could then make a quick decision.

SENATOR BAER stated there would have to be a change in the Senate rules. The rules will have to be bent a little.

SENATOR NELSON stated that this should be something which the legislator should be able to disclose. You would then be excused from voting.

CHAIRMAN GROSFIELD referred to an article he read wherein a bill passed 22-19 with 9 abstentions. Those nine could have swayed it any way. They were not representing their constituents. They were not doing their duty as a legislator. The other problem is that when there is an abortion bill, there will be a lot of people who come up with a conflict.

SENATOR NELSON stated that in the House, they do not take a walk. Conflict needs to be defined.

SENATOR BAER stated that if you have an identifiable conflict, the rules should allow you to abstain. This should not allow legislators who don't want to take a position on a tough issue to abstain.

Mr. Petesch commented that there have been physicians serving in the legislature before. If you were a physician and part of your practice was to perform abortions and there was a bill to prohibit abortion, would you be allowed to vote?

SENATOR NELSON stated if a physician handled abortions, this would relate back to money issues.

Mr. Petesch commented the physician would have a financial interest in that bill.

SENATOR BAER stated that if he said he had a conflict of interest and that he could not vote, the Senate could rule that he had to. That would be untenable.

CHAIRMAN GROSFIELD stated they would not be doing the process a service if everyone became too nervous about conflicts.

Mike Pichette commented that the person could be excused from voting but forced to announce how he would have voted.

Mr. Jacobson stated the Ethics Commission looked at the size of the class. The class should be very small to give you justification for not voting. They felt it would be best to let the Rules Committee develop the language of the best way to handle it. If you decide what the parameter is, it could then be given to the Rules Committee to deal with at the next legislative session.

SENATOR BAER commented that most of the problems arise with public employee legislators and that was looped out of SB 115.

CHAIRMAN GROSFIELD asked if the committee wanted a different disclosure for legislators who are paid by public dollars. A pay plan which includes a raise would be a large class. You may have five or six people in the Senate who would be directly affected.

SENATOR BISHOP stated he had no problem with a public employer or a teacher voting on a teacher salary bill. We are a citizen legislature.

CHAIRMAN GROSFIELD questioned whether teachers could vote on increased pay for teachers or if state employees could vote on increased pay for state employees.

SENATOR NELSON stated that if they were talking about a pay increase for state employees and there were five in the Senate and the vote carried by three or four, that is when fingers start pointing.

SENATOR BAER commented that in the 93 Legislature over 30% of the legislature was directly connected to schools.

SENATOR BISHOP believed that should be a campaign issue.

SENATOR BAER stated the way to look at class is to determine how broad the class is and how many votes will actually be affected. If there are three or four people in that class but the vote difference is 15 votes apart, you do not have a significant impact.

SENATOR NELSON commented it is hard to pinpoint the funding for schools. Education funding is broadly spread out to help education, students, teachers, and so on. She can see the

connection of a state employee voting on state employee increases.

SENATOR BARTLETT stated she has a problem with the state employee conflict. She represents a district which has a lot of state employees. Half of her district is represented by Representative Ewer who is a state employee. Representative Grimes district has a number of state employees in it. She would want this limited to the individual. When people are in the legislature they are concerned about the people they are representing. Legislators are looking at what the needs of the state are and what can be done within those constraints.

SENATOR BAER does not believe that the legislators are the serious problem. The area where the serious problem arises is public employees who abuse their positions using public time, funds and resources to promote a political ideology.

CHAIRMAN GROSFIELD clarified that they have suggested that both Houses have an Ethics Committee.

Mr. Petesch stated they could statutorily require committees.

CHAIRMAN GROSFIELD continued that both Houses must have an Ethics Committee made up of equal representation from both parties. The purpose of the Ethics Committee is to come up with restrictive parameters for a legislator either to abstain or vote on a bill. As far as the public employee is concerned, they should be treated the same as everyone else. If something is very direct, legislators could disclose the conflict and ask the Ethics Committee to be let off the hook.

SENATOR NELSON stated this should be tied to a pecuniary interest.

CHAIRMAN GROSFIELD stated that current statute referred to financial interest and this should be restricted to the same. The only time there is a conflict is if it is very direct and personal.

Mr. Petesch commented that it would be a combination of a restrictive class and a direct financial impact.

Mr. Jacobson stated that SB 115, Section 7, describes what the committee has been discussing. The first subsection discusses what a public official or public employee can't do and then (2) creates the exception which is the profession, occupation or class. The only modification would be to refine the size of the class. It would have to be everything but a very small class. (4) could state the legislature shall establish a bipartisan Ethics Committees and adopt rules governing conduct of members.

Mike Pichette commented he had a problem with (3) because the definition section defines a business associate as a corporation in which you have more \$1,000 worth of stock. The use of the words business and associate in this same sentence might be broadening this class again.

SENATOR BAER believed the current code does not differ very much from the language in SB 115.

Mr. Petesch referred to 13-35-226, (3), and stated that there is more ethics legislation than is apparent from looking at the ethics code. The one item this doesn't address is public employees using public time to address legislation being considered. This talks about support for political committees, nomination for office or passage of a ballot issue. This does not deal with legislation during the session.

SENATOR BAER commented that his bill deals with that and Mr. Argenbright needs something substantial to enforce these things which apparently does not exist. SB 136, page 4, Section 4 deals with this.

Mr. Petesch commented the current ethical statute in the ethics code talks about private business purposes. SENATOR BAER takes some of the concept of this campaign provision and puts it into the ethics provision and then strengthens it.

Mr. Argenbright stated that he had a number of complaints filed which deal with school district people trying to influence the outcome of ballot issues of a voted levy. He has always interpreted trying to influence in a very narrow way. It has to be a very direct attempt to influence. Where people in the communities get upset is when the teachers stand up in front of the class and explain that the sky will fall in. The elected trustees cannot be muzzled in terms of what they say and they direct their local school superintendent distribute information about the situation. The question is, is that influencing the outcome of a ballot issue or is that merely providing information to the public about their schools.

SENATOR BAER said that would not be a tough situation if his bill goes into effect. He read from a fax sent to him by a teacher on the school fax machine on school time urging him to vote "no" on SB 180 and "yes" on HB 268. This is a violation even under current standards. His bill gives guidelines to act on these things without any ambiguity.

CHAIRMAN GROSFIELD asked what would be in (3), Title 13, which is not in SB 136.

Mr. Petesch commented that the only item would be that the section is not intended to restrict the right of a public employee to personal political views.

SENATOR BAER stated public employees can do so on their own time but not when they are on the job. They cannot use public facilities, materials and time. When they leave the job at 5:00, they can do whatever they please.

Mr. Petesch commented that the current statute does not address legislation and the legislature. It talks about ballot issues. That is a large void. SENATOR BAER directly covers that issue. He discusses properly incidental to something else required by law. Departments register certain people as lobbyists. If you are requested by a legislator or committee to testify, that would be incidental to your duties. If you are on your own time and not being compensated, that would still be permissible.

SENATOR NELSON asked how this would relate to school superintendents. They are paid their regular salary and then paid mileage and per diem.

SENATOR BAER stated that his education bill was scheduled for a day when school had been let out and teachers were in Helena for a convention. If they had been excused for that day and were not supposed to be on the job and choose to be here to testify they are within their rights. They all were excused. He is looking for the superintendent who decides to leave his job and testify or lobby on a school issue when he should have been at their job that day.

CHAIRMAN GROSFIELD commented that people frequently come in and say they work for a state agency; however, they appear on their own time and speak on their own behalf. A school superintendent may have been sent by a school board so that would be part of their job. He asked how Montana school boards would affect legislation? They now have an association and they pay into it, all tax dollars. Without them, how will that interest be represented?

SENATOR BAER stated his bill probably does not cover that. It doesn't prohibit that. He has a problem with a school board paying \$5,000 in public funds to the Montana School Board Association and the Association sending a paid lobbyist with that money to influence political decisions.

CHAIRMAN GROSFIELD commented that his bill states use of public resources to pay in any way a lobbyist to influence political decisions. All of the Montana School Board Association funds are public resources.

SENATOR NELSON questioned how the legislature would get their message if they did not have someone over here.

SENATOR BAER commented the Montana School Board Association is a private organization. It is not a government entity. School boards can relate their messages to the legislators. They can send a fax any time they want on their own time.

CHAIRMAN GROSFIELD stated another group would be MACO. The distinction between MACO and MSBA is that MACO is funded by public money; however, county commissioners are paid.

SENATOR BAER stated that Judy Browning worked on his bill for quite a while and she suggested a lot of the language especially 2-2-121(2)(g)(i) authorized by law; or (ii) properly incidental to another activity required or authorized by law. That provides pretty open ended language for county commissioners.

CHAIRMAN GROSFIELD commented he is uncomfortable with limiting MACO's ability to function in this process. Something would be lost in the process if MACO, the School Boards Association, and the school administrators were excluded from participation in the process. That is an interest which needs to be represented.

SENATOR BAER stated that there should be some language to exclude those important functions.

SENATOR NELSON stated that when the School Board Association has a lobbyist here who speaks for the 500 plus districts, it pulls it all together. We cannot expect the school boards in the small communities to be on top of how everyone feels. A paid lobbyist can convey all the feelings of the school boards to the legislature. It is important to have someone lobby for them who is very knowledgeable on the stances which they took at their convention.

CHAIRMAN GROSFIELD commented this refers to class. A group of school boards put together a single effort. He suggest excluding legislative political decisions in 2-2-121(2)(h).

Mr. Petesch commented that MACO, School Boards, League of Cities and Towns are all extremely active on ballot issues.

CHAIRMAN GROSFIELD commented it does not bother him to have an association approach legislators. It doesn't bother him to have a county commissioner present either.

Mr. Petesch stated the amendments soften the initial language. Subsection (h) is still an absolute prohibition against the types of quasi-public associations.

CHAIRMAN GROSFIELD questioned (h) using public resources to subsidize the media.

SENATOR BAER believed that meant paid advertisement.

Mr. Jacobson commented that the type of lobbying being discussed is individual or collective. SB 115, Section 5, simply says may not use public funds, time, personnel, facilities, or equipment for political or campaign activity. This does not talk about influencing a vote. There should be a reference back to personal gain. He believed that SENATOR BAER and those concerned about

this feel that school teachers are going to personally gain or lose as the result of a vote on an election as compared to the collective conscience of the people. If this was tied into personal gain, that would be the key. The groups who come in and provide information or describe what is best for their offices do not have a personal gain.

SENATOR BAER stated that political ideologies are just as important as personal gains. It is a very much broader situation than just a direct personal gain.

Mr. Petesch stated personal gain would probably not work as a measure. It would not be any more proper for him to use state time and facilities to urge a vote on a school levy than it is for a teacher. He would not have a personal gain but it would not be proper conduct.

Mr. Jacobson commented it could be worded to say personal gain or personal position.

CHAIRMAN GROSFIELD stated that in Mr. Petesch's example he wasn't talking about position. He was just talking about wrongful use of state time.

Mr. Petesch commented that as far as using public resources, SB 136 amendments on 2-2-121(2)(g) would be used and there may be some language referring to incidental to the office. Superintendent of Public Instruction has some duties to promote public education. Is speaking against a proposed ballot issue on a property tax freeze, because of the impact it will have on education, properly incidental of promoting education? Half will say it is incidental and half will say it is a blatant misuse of the position. In (h) the decision is to change "subsidize in any way" to "compensation" and to carve out an exception for certain quasi-public organizations which represent groups of public entities.

SENATOR NELSON questioned when the groups are carved out in (h), will there be anyone left?

Mr. Petesch commented this would prohibit the Legislative Council from donating money for hiring a lobbyist. The Legislative Council would be prohibited from taking out an ad in the case of the legislative reorganization issue being a ballot issue. They could all individually contribute from their own pockets to do so, but they could not use Council funding. The only other groups up here would be private.

SENATOR BAER suggested deleting (h) entirely; however, he is strongly opposed to exempting the Montana School Board Association.

CHAIRMAN GROSFIELD stated they could delete (h) and have (g) remain in the same form.

Mr. Petesch thought there would still be the argument that they are allowing the use of public funds for persuading political decisions without a specific authorized use by law.

CHAIRMAN GROSFIELD stated that for a local school board, they would have to specifically authorize on a record of their meeting the use of taxpayer money to send home the brochure attempting to influence the levy.

SENATOR BAER stated it should not be authorized.

Mr. Petesch commented that the schools may have some language in statute which authorizes them to belong to an association.

Mr. Argenbright stated that school trustees have the authority to extend the school budget. They negotiate with staff and approve every bill paid by the school. As elected officials they have the duty to supervise the expenditure of that budget.

SENATOR ECK commented that school boards could send out a voter information pamphlet with pros and cons.

SENATOR BAER stated U. S. Supreme Court in Boyd v. United States stated: "In our ----- the constitutional commitment to free elections, guarantees an electoral process free of partisan intervention by the current holders of government authority or the current holders of the public treasury." That case is 100 years old and still stands. We are getting far afield on the real context.

CHAIRMAN GROSFIELD stated he agreed to a point but that he is troubled by going too far.

SENATOR BAER quoted U.S. Supreme Court Justice Brennan, "Partisan use of public funds in an election would violate the first amendment to the U. S. Constitution made applicable to the states by the Due Process Clause of the Fourteenth Amendment."

CHAIRMAN GROSFIELD suggested accepting all of Section 4, of SB 136 with the exception of (h). SENATOR BAER would be free to offer (h) as an amendment. Subsection g states supplies cannot be used for any political action unless it is properly incidental. That should address faxes and letters sent home with children.

SENATOR NELSON felt that (g)(ii) was vague.

Mr. Jacobson stated that language is identical to Section 5 of SB 115.

CHAIRMAN GROSFIELD stated that Section 5 had problems with collective bargaining and professional responsibility obligations.

Mr. Petesch stated that 121 applies to locals, state employees and legislators.

SENATOR BAER stated the (i) and (ii) is language which Judy Browning said would take care of the fears of the committee as well as many executive department employees who felt they may be constrained from testifying at committee hearings. Beth Baker is very satisfied with the language.

SENATOR BARTLETT asked for clarification regarding state agencies, county or city, lobbying the legislature in relation to (g).

CHAIRMAN GROSFIELD stated that Mr. Petesch believes there is language in the school law which authorizes school boards to join associations.

SENATOR BARTLETT referred to "affecting a political decision" in (g) and believed that the decisions in the legislature would be political decisions.

Mr. Petesch commented the amendments create some flexibility there. Paying dues is authorized by law. If the association uses the dues to lobby, it would have to be properly incidental to another activity such as protecting county budgets would be properly incidental to county government.

SENATOR BARTLETT asked if legislators would have to request that someone from a state agency attend a hearing.

Mr. Petesch stated if the person is registered as a lobbyist there would be no problem. Ms. Browning and Ms. Baker felt this language authorized them to perform their functions.

CHAIRMAN GROSFIELD commented that a state employee has to be listed as a lobbyist to come over here on a regular basis. The governor's office has wanted to be pretty limiting in that. He suggested the committee look at enforcement. Section 4 has specific penalties in it.

SENATOR BARTLETT referring to Section 4, (5), stated that she does not have a clear idea of what disciplinary action is contemplated. Who would take the disciplinary action? Under what circumstances would disciplinary action occur? How would a civil penalty be assessed?

Mr. Petesch commented that disciplinary action would be handled by the employing agency. Civil penalty could be a complaint filed with the Commissioner to be imposed administratively and subject to appeal to court or this could be clarified to state who has standing to bring a complaint in district court for the penalty. The criminal penalty is county attorney enforcement.

SENATOR BARTLETT had concerns about the enforcement mechanisms. They are susceptible to abuse and harassment of public officials. If there is a group that decides that a particular officeholder has a conflict of interest and if a civil case could be brought by any citizen in the state of Montana against that officeholder, that officeholder could be plagued with a series of civil cases until the courts decided to dismiss as frivolous. They do not dismiss the first or second time a case is brought.

SENATOR BAER suggest putting the English rule of prevailing party collects attorney fees from the nonprevailing party. That would eliminate frivolous complaints.

Mr. Jacobson stated the issue of enforcement almost needs a separate commission. A well-funded group not concerned about having to pay opposing attorney fees could devastate a person. There could be a situation of attacking a legislator during the session which would paralyze that legislator by the process of going to court. Filing the action and starting the process could cause severe harm, then the person could dismiss the action. There wouldn't be much in attorneys fees at that point. They felt it was necessary to have an independent person to get rid of the things which were malicious in nature, frivolous or otherwise causing problems to people. An independent entity will cost money.

SENATOR BAER stated it could be changed to a criminal penalty subject to the county attorney or give it to Commissioner Argenbright to make that decision. We cannot pay \$600,000 for a government bureaucracy to handle this.

SENATOR BISHOP commented that when he was up here in 86 a lawsuit was filed against him. He had to hire an attorney to handle it and it cost him \$12,000. Perhaps a legislator could be exempt during the session.

Mr. Petesch stated there is legislative immunity for legislative acts.

SENATOR BISHOP commented courts can grant sanctions against the attorney for bringing a frivolous suit.

SENATOR BARTLETT stated there are a number of local government officials around the state who are dealing with these types of situations right now. They have to make time in their day to deal with these situations. Even a frivolous case requires a response. Frequently in governmental instances there are administrative procedures which can take the place of a court action. That is an aspect of SB 115 which appeals to her. She would like to have the committee discuss a commission which would deal with ethics allegations.

SENATOR ECK commented that one of the things which affects the Commissioner is the right to request an investigation of one's own conduct, page 25, Section 39.

SENATOR BAER stated whether you have a commission or an administrative agency the net result is going to be either civil penalties by way of a civil suit or prosecution by the county attorney or the attorney general. We will have to provide penalties for violations of the law. A long drawn out administrative procedure will probably result in the same thing if the person has violated the law.

Mr. Petesch stated that they may want to have these violations filed with the Commissioner as a contested case and give him the authority to impose the penalty at which point an appeal from that is limited in review. The review of a contested case is to whether there was an error of the law or whether procedures were violated. There is a presumption that the agency decision is correct and you are limited to the record established at the agency level. You are not allowed to bring in new evidence.

CHAIRMAN GROSFIELD posed the scenario wherein there was a complaint which went to the Commissioner, what are the options for the Commissioner at that point?

Mr. Petesch commented the Commissioner would act as a hearings officer, a mini court. There are procedures set up clearly in statute to be followed at a contested case hearing such as Rules of Evidence, representation, etc. The Commissioner would hire a hearings office to act on the case. The time requirement is no more than six months. The normal time period is less than that.

SENATOR BAER commented they could still be appealed to the district court without a trial de novo.

Mr. Petesch commented you cannot have a trial de novo, you are limited to the record established at the administrative level. The agency pays the costs of the hearing. Absent appeal, the cost could be assessed against the person filing the complaint or the violating official.

Mr. Argenbright stated that his worst fear is shortage of staff. If he is required to hold contested hearings and if he had the ability to level a civil penalty to take care of some of the violations, this could work. He has to first go to the county attorney who usually does not want to take the case. He does not have any budget for prosecution. He is trying to deal with all the complaints and violations of campaign practices. If this would be an added responsibility for his office, he would need some resources to be able to handle it.

CHAIRMAN GROSFIELD believed that he would contract with a hearings officer who would handle all the work. There should be

no impact on the Commissioner's Office other than whatever the hearings officer is doing.

Mr. Petesch commented that was correct; however, there would be some record keeping involved. The primary cost of the contested case would be the hearings officer and the transcript.

SENATOR BAER stated that if this law is enacted, there should not be as many violations. It will be a good deterrent. The education aspect will also be helpful.

Mr. Jacobson commented that he felt there still needs to be a balance of politics in a Ethics Commission. They would have a small staff which would handle complaints, investigations, and prosecution. This would reduce the fiscal note by one half. He wasn't sure if this allowed someone to file a contested case on their own behalf against some party to the complaint. It would be better to have a staff which initially investigated the complaint and then made the determination of whether or not to prosecute. In that situation, the safeguards would be built in to investigate your own activities and you would also be able to get rid of frivolous complaints and complaints based upon political mischief. That is a way to solve the enforcement problem and reduce the cost.

CHAIRMAN GROSFIELD was still concerned with the fiscal note. Cutting \$600,000 down to \$300,000 would still leave the note too large. The legislature would have to decide if there was a big enough problem to require a \$300,000 solution. His sense is that the legislature will say there is not. All the enforcement would then be deleted and all that would be left to the bill would be a voluntary situation. He would like to see something in between the voluntary approach and the fiscal note.

Mr. Jacobson commented that in all likelihood there would be SWATCAP funds, which is money that can be captured from the federal government. There may be some political disagreement over the funding source; however, you could mitigate the amount of money which would come from the general fund. Ethics laws which are going to work will have to be paid for and this would be a way to mitigate it. The revised fiscal note would be approximately \$125,000 to \$250,000, which could be offset against a considerable amount of SWATCAP funds. SWATCAP is money which the federal government provides for essential governmental functions.

Mr. Argenbright commented that I-118 calls for changes in his staff and his initial request to cover this has been cut in half. His original request was for 4 FTEs and was approximately \$200,000.

CHAIRMAN GROSFIELD asked the committee's consensus on going ahead with the administrative procedures along with SENATOR BAER's idea

of the English rule and to have this handled through the Commissioner's Office.

SENATOR NELSON commented that without enforcement there is no point to the bill.

CHAIRMAN GROSFIELD stated the penalty section would look different, but the thresholds would be okay.

Mr. Petesch commented that "disciplinary action" applied to a public employees.

CHAIRMAN GROSFIELD questioned if county officials should be handled by the administrative process through Mr. Argenbright's office.

The committee felt that would be very cumbersome. The decision was made to leave the county officials with the local court system.

Mr. Petesch commented there was no enforcement mechanism in current law for county officials. Locals are not covered in SB 115. There could be language to state that a city or county shall establish an administrative procedure for dealing with violations.

SENATOR NELSON stated they are subject to recall.

SENATOR ECK felt that language would be an unfunded mandate.

{Tape: 3; Side: A}

CHAIRMAN GROSFIELD suggested accepting Section 5 of SB 136 if the words "and eliminate" were stricken.

SENATOR BARTLETT commented that the disciplinary action is geared toward employees and does not affect officers. The language could read "disciplinary action and/or a civil penalty of not less than". There would be no other way to capture elected officials other than civil penalties.

CHAIRMAN GROSFIELD recapped that they have dealt with all the issues on his list with exception of advisory opinions, definitions, role of commissioner, and gifts. They would also have to decide on a vehicle. The definitions he would like to see included are private interest and public duty.

Mr. Petesch stated they need to define a "public employee".

SENATOR BARTLETT had a question on Section 4 of SB 136. She felt "representations" should be added.

Mr. Petesch commented this is partly covered in 2-2-104(1)(b)(ii), accept something tantamount to a gift which a reasonable person should know is primarily for the purpose of rewarding him for official action taken. This could be amended to say "or because of his official position".

Mr. Petesch commented that within the framework, it could be provided that state employees may seek advisory opinions from the agency. Legislators have ethics committees. High level employees could go to the agency for advisory opinions.

CHAIRMAN GROSFIELD commented that the Department of Administration would handle training and develop a brochure. If there was a conflict, an employee or director could go to the Department of Justice Personnel Division.

SENATOR ECK commented that one of the problems with ethics is that the county attorneys have refused to take these cases.

Mr. Jacobson stated advisory opinions provided by each agency would create a lot of inconsistency. The only place for any consistency would be the attorney general. Somewhere down the road there may be a political attorney general and this could create problems.

Mr. Petesch stated that within agencies there would be divergent results.

Mr. Jacobson stated that even in agencies where the person could go to the attorney, if the director were to lean on the attorney for a result, the attorney would either have to quit or come up with something which would make the director happy.

SENATOR ECK suggested a pared down commission which could be either attached to the Commissioner's Office or separate. Most state agencies use at least a couple of hundred thousand dollars a year for advisory committees which have no appropriations. SRS probably spent \$300,000 to \$400,000 on their health care planning committee. The Department of Commerce has had many, many advisory committees. For every program which is established, the department sets up an advisory committee and somehow it is funded out of their own money. This is for the public. This bill will not be accepted as a viable code of ethics unless it has some enforcement.

CHAIRMAN GROSFIELD asked if the administrative appeal, a hearing officer through the Commissioner of Campaign Practices Office, would be political.

SENATOR ECK felt that would be perceived as part of the judicial system. The hearing officer idea is a good idea.

Mr. Petesch commented they could contract for advisory opinions, but there would be costs there too. There could be a provision

wherein an agency could seek an advisory opinion from Commissioner Argenbright who could contract for it and then the agency would have to pay for the cost of issuing the opinion.

SENATOR BARTLETT stated they needed to spend time on gifts. She wanted to revisit postemployment restrictions in SB 115 and existing law. Another section in SB 115 she wanted the committee to look at was actions taken while negotiating for employment.

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN SENATOR LORENTS GROSFIELD, on
February 13, 1995, at 7:00 AM

ROLL CALL

Members Present:

Sen. Lorents Grosfield Chair (R)
Sen. Larry L. Baer (R)
Sen. Sue Bartlett (D)
Sen. Al Bishop, (R)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Greg Petesch, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Subcommittee Business Summary:

Meeting: SB 115, SB 136

CHAIRMAN GROSFIELD stated the three items left to discuss would
be: gifts, advisory opinions, and the revolving door provisions.

SENATOR BARTLETT asked if postemployment activities had been
discussed.

Mr. Petesch commented that was included in present law, Section
2-2-201(1) states that a former employee may not, within 6 months
following termination of employment, contract or be employed by
an employer who contracts with the state or any of its
subdivisions involving matters with which the former employee was
directly involved during employment. That is the issue currently
being litigated with the Department of Commerce former auditors.

SENATOR BARTLETT commented that in SB 115 there was an interest
in preventing legislators who leave office from lobbying the next
session of the legislature. She wondered how this was enforced.

Mr. Petesch answered that the contract which the former employee and the government entity entered into is voidable. When the issue arose involving Science and Technology this past summer, the Finance Committee became interested in a situation in which the former executive director went to work for the entity which received a fairly significant investment from the Science and Technology Alliance. The Department of Commerce reviewed the issue and declined to void the contract stating it could work a hardship on the company or the executive director. Private action was brought by people who were not awarded a contract involving former Department of Commerce local government auditors. Private parties can bring an action to void the contract.

SENATOR BARTLETT commented that because of the retirement incentive, at one point there were numerous employees leaving strategic positions. The agency then turned around and immediately contracted with them for some assistance.

Mr. Petesch stated that in that bill itself there was specific provision that allowed a contract with the former agency if they made a finding that it was an essential service. This was limited to a certain number of hours per year.

SENATOR BARTLETT stated that 2-2-201(c) states what former employee does not include. She has no problem with someone terminated due to a reduction in force. This covers other involuntary termination not involving violation of the provisions of this chapter. If someone is terminated because they are incompetent, they should not be excluded from the prohibition of contracts for six months.

CHAIRMAN GROSFIELD stated there was a similar issue in 2-2-105. SENATOR BAER had this in his bill. It states that a public employee may not, within the months following termination, obtain appointment in which they would take direct advantage unavailable to others. The first provision was for six months. SB 136 states 12 months. If a person is fired, should he be able to go to work for the outside agency?

Mr. Petesch commented that SB 115 had a provision which covered negotiating for employment. You cannot use your current job to negotiate for employment. This is touched on in current law but is much more explicit in SB 115.

CHAIRMAN GROSFIELD questioned how the panel felt about a legislator becoming a lobbyist after resignation or retirement.

Mr. Jacobson stated the Commission felt very strongly about this. It was felt that a legislator's influence with their fellow colleagues would be much greater than other lobbyists because they had just sat through all the caucus meetings and they knew the thinking of various individuals and where their pressure points were. This is the same logic behind other postemployment

restrictions for other employees up to one year not to become involved in matters which they were directly involved with for the state. This is a controversial area.

SENATOR BAER commented that they are primarily worried about wrongful use of insider information. Everything a legislator does is public.. There doesn't seem to be the same situation between a department person and a legislator. If there is an advantage by a former legislator knowing current legislators, we may be reaching too far.

SENATOR BISHOP asked SENATOR BARTLETT what time period she had in mind.

SENATOR BARTLETT commented that according to SB 115, their real concern was to have someone lobby the next regular session after they left office.

SENATOR NELSON stated that a legislator who comes back to lobby is very knowledgeable. They may know a lot about people but they also know the issues and that would be a plus for the person who hired them as a lobbyist.

SENATOR BARTLETT stated that if a lobbyist knows that he is not going to run again and this person wants to lobby when leaving office, they could shape some things this session to curry favor with potential principals. She questioned whether there is any federal prohibition for members of Congress.

CHAIRMAN GROSFIELD stated that the legislators he knows who have lobbying jobs didn't know who they were going to work for until close to session time or even after session time.

SENATOR NELSON stated that if the public sees this as improper, we should look at this..

SENATOR BAER commented that they have already eliminated a lot of improprieties which the public has identified.

CHAIRMAN GROSFIELD suggested one way to address this situation would be to leave it at six months after the end of your office. If the legislator lost in the primary, he could still be a lobbyist.

SENATOR BARTLETT believed that in the public eye part of what they are tired of is seeing this as a closed system whereby the special interest groups have more influence a than the general public.

CHAIRMAN GROSFIELD clarified by leaving this at the next regular session.

Mr. Petesch commented that SB 115 applied the restriction to public officials. Should this be applied to these people as well. This would mean a department director.

SENATOR BARTLETT commented that the committee defined a "public officer" as any state officer or any elected officer of any subdivision of the state.

Mr. Petesch stated they would use "state officer" for this restriction which is defined in (8). This would be elected officials and department directors.

CHAIRMAN GROSFIELD asked if this should go to public employees.

The committee decided to use "state officers".

SENATOR NELSON thought this should also include public employees.

The committee decided to use "public employees" as well.

Mr. Petesch commented they may wish to put something in regarding negotiating for employment. This would be in 2-2-102(4)(c) in the definition of private interest. This is found in 2-2-105, "A public officer, legislator or public employee may not: . . . (b) accept a gift . . . or a substantial economic benefit . . ." this could be a promise of employment. "(i) that would tend improperly to influence a reasonable person . . . to depart from . . . the person's public duties;" would include the negotiation for offer of employment. That is how it is dealt with currently. With some of the clarifications which have been added, it is stronger than it was. In terms of enforcement, a penalty has not been provided. This could state that they may not be registered as a lobbyist.

SENATOR BARTLETT asked Mr. Argenbright who had to register as a lobbyist?

Mr. Argenbright stated if part of the person's salary includes the duty of lobbying, that person would have to register. If you are simply reimbursed for expenses, the threshold is \$1,000 during the calendar year.

CHAIRMAN GROSFIELD next referred to advisory opinions. They have set up an Ethics Committee for each House. If a legislator is worried about a conflict in a vote, he could ask the Ethics Committee to make a ruling. This would amount to an advisory opinion with regard to a vote. Public officers and public employees can go to their own legal counsel. A "right to call an investigation on your own conduct" is more complex. There you are assuming that you could ask a question confidentially before acting in order to find out if there is a potential problem. Education has also been provided for which should clarify a number of issues.

SENATOR BARTLETT stated the training would lead to a multiple of questions. If the avenue for public employees is to go to their agency legal services or counsel, there will be a fairly broad disparity between responses. There is unlikely to be very much consistency in how the provisions are applied.

CHAIRMAN GROSFIELD commented that they discussed developing a consistent set of rules.

Mr. Petesch stated that was in Section K. The Department of Administration Personnel Division is to foster programs for ethical conduct. (4) deals with model rules of conduct and a pamphlet covering ethics standards.

CHAIRMAN GROSFIELD posed the question that if a concern came up which was not included in the model rules, should the Department of Administration develop a rule with regard to that issue and add it to the model rules?

Mr. Jacobson stated the biggest fear in the area of advisory opinions is that politics could be involved. There will not always be clean cases. Five, ten or twenty percent of the matters will be purely political and anytime an advisory opinion authority is granted to an entity which is controlled by politics, you will get a political result. That is why they suggested an independent group which would be as politically balanced as possible. That is the heart of the problem.

CHAIRMAN GROSFIELD commented that should not come up very often. The commission concept has advantages; however, the committee seems to be leaning away from that approach because of the large fiscal note. They would have to rely on the education and the integrity of the people involved. He wouldn't have a problem with offering some alternative places to go if a person was worried about politics. If you worked for DNRC and were worried about politics, you might go to the Attorney General's Office or maybe the Department of Administration.

SENATOR BARTLETT stated if they considered a commission and limited their role to advisory opinions and contested case hearings, she would be interested in seeing how much that would reduce a fiscal note.

CHAIRMAN GROSFIELD asked if this would only be for public employees and public officers.

SENATOR BARTLETT commented her largest barrier to legislators going to an ethics commission is that it would have to be attached to the Executive Branch and that would be a separation of powers issue. It is not desirable from a public perception point of view for all of the legislative mechanisms to stay within the legislature. However, in reality given the separation of powers issue, that is more appropriate. To make it work, public officers, who would be the top statewide elected people

and department directors, would need to go to the ethics commission. This would pull it out of their own agencies and gives them someone independent from their agency to go to for an advisory opinion or a contested case hearing. Public employees may be able to work this out within their agency and having an appeal right to the Commission so that the bulk of the work would be taken care of within the agency.

CHAIRMAN GROSFIELD stated that a public officer or a director of a department, who is a political appointee, could talk to their own people quietly and ask what would happen. If they do something that gets them into trouble, they are in the full light of the public and the press would become involved.

SENATOR BAER stated lawyers can call any member of the Commission on Practice and they usually get a brief advisory opinion over the phone. We don't need to build a large bureaucratic commission to handle these problems. The Supreme Court, in creating the State Bar of Montana, has provided for a small group of people who serve part time on the Commission on Practice. This is informal and works very well.

Mr. Jacobson commented the Bar Association is in the process of hiring bar counsel to deal with this sort of problems. They are looking for someone who is trained in that area and is available to answer questions because they have found that a voluntary basis consumes a lot of time. You really need someone who has a specialty and understanding of all these things who is independent of politics.

SENATOR NELSON stated she feels it would be difficult to get people to serve on this commission. Who would be knowledgeable enough without extensive training to be the judge of ethics? Lawyers have legal background. If they are knowledgeable, they will have ties to politics. Maybe in-house is the best way to handle this.

SENATOR BISHOP stated he did not have a problem with in-house counsel.

SENATOR BARTLETT stated she was not comfortable with in-house counsel. There may be some retired judges in the state who could serve on the commission. There may be clergy people who would also serve.

SENATE COMMITTEE JUDICIARY SUBCOMMITTEE DATE 2/13/95
ETHICS SB 115 SB 136

Attach to each day's minutes

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN SENATOR LORENTS GROSFIELD, on
February 13, 1995, at 11:20 AM

ROLL CALL

Members Present:

Sen. Lorents Grosfield Chair (R)
Sen. Larry L. Baer (R)
Sen. Sue Bartlett (D)
Sen. Al Bishop, (R)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Greg Petesch, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Subcommittee Business Summary:

Meeting: SB 115, SB 136

CHAIRMAN GROSFIELD stated that the committee had discussed having advisory opinions handled within the agencies. SENATOR BARTLETT was uncomfortable with that and would like an appeal to a nonpartisan commission. If a commission were set up, should it be in the Commissioner's Office?

SENATOR BARTLETT stated nothing quite fits. SB 115 proposed that it be attached to the Secretary of State's Office. She has concerns about that in light of the bill to make the Lieutenant Governor effectively the Secretary of State. At this point, the Commissioner's Office would be the most neutral ground remaining. The Attorney General's Office is another option; however, there have been attorney generals who use it politically to a greater or lesser extent.

SENATOR NELSON asked if the Commission would be made of local people or people from around the state.

SENATOR BARTLETT stated she would prefer the procedure written in SB 115. They would be like other quasi-judicial boards.

SENATOR NELSON commented they just set up a commission in the game farm bill where they are not even compensated expenses. You can't expect people to travel without some compensation.

SENATOR BARTLETT commented she would not like to see it restricted out of those kinds of considerations to people within a two hour drive from Helena, for example. There would have to be expenses.

SENATOR BAER stated he had talked with Mr. Argenbright earlier and his major concern is to have legislation which is definitive and nonambiguous, which is what we are doing in creating this new bill. He asked Mr. Argenbright for his input into having people refer to him for informal advisory opinions.

Mr. Argenbright commented that the specific nature of the language would be helpful. He worries about getting requests for advisory opinions from all the various state agencies. This will generate a large amount of extra work. When dealing with employees there would be personality problems, etc., and they could be career makers or breakers.

SENATOR BAER stated they covered the situation where an employee could approach a department head who should have a basic knowledge of the ethical procedures inasmuch as an educational program and handout would be provided. He thought that 95% of the questions could be handled by department heads or someone in that department who was knowledgeable enough to answer these questions. That would leave only the difficult ones to be referred to the Commissioner.

SENATOR NELSON stated she could see the need for a special advisory group but she knows it would be heavy duty in Mr. Argenbright's department.

CHAIRMAN GROSFIELD asked SENATOR BAER how he felt about having a commission backing up Mr. Argenbright.

SENATOR BAER commented he was very worried about spending money on a commission. It would be a very expensive proposition.

CHAIRMAN GROSFIELD stated that a commission would have to be on call. They would need to meet very timely in some instances.

SENATOR BARTLETT asked why they would need to be on call.

CHAIRMAN GROSFIELD answered that a tricky question may come up which needs an answer within a few days. They would have to make themselves available on short notice.

SENATOR BARTLETT suggested that be handled through a conference call or interactive video.

CHAIRMAN GROSFIELD stated that an advisory opinion would not need to be public so a conference call would work. Someone would then have to write the opinion.

Mr. Argenbright stated he has two employees. They contract for attorney services with Jim Scheier in the Attorney General's Office. They would need someone to write the opinion. If they did not have to deal with state employees they might be able to handle the workload.

CHAIRMAN GROSFIELD commented they were just talking about public officers.

SENATOR BARTLETT stated it would include statewide elected officials, department directors, and a public employee who had a problem which could not be resolved internally.

CHAIRMAN GROSFIELD stated that if he was the director of an agency and he sensed a possible ethics problem after speaking to the attorneys in the agency and was uncomfortable with the situation, he could then talk to the governor's attorney. If there was still a problem, he then would go to the Commissioner's Office and ask for his input into the problem. The Commissioner would then talk to his attorney in the Attorney General's Office. If he is still not comfortable, the Commission could be convened to give him an off the record answer.

SENATOR BARTLETT commented she would limit it for statewide elected officers and department directors to get their answers from the Commission in all cases. That is a very limited number of people.

SENATOR NELSON asked what the course of action would be if an employee had a problem with the director.

SENATOR BAER stated they might think about a gratuitous advisory group which could work through the Commissioner's Office. Their duties would be very limited.

SENATOR NELSON stated she believes the Waste, Fraud and Abuse Hotline addresses some of this. If the concern is a state employee, they can call the Legislative Auditor's Office.

Mr. Petesch commented that the ethical questions are the ones which the auditor has been unable to resolve through the hotline. They are reported there and the auditor can forward the information to an agency.

CHAIRMAN GROSFIELD commented one option is to go ahead without a commission and hope that the education angle will take care of the situation. The other option is that there may be a few

things which slip through the cracks and thus some sort of appeal would be needed. Someone would be authorized to appoint an advisory counsel to the Commissioner's Office who would only get expenses and would try to deal with the tough questions and provide a written opinion. If the person decided to go ahead with the action in question, he could use the written opinion. If he decided not to go ahead with it, there would be no written opinion.

Mr. Petesch commented that SB 115 provided that the advisory opinion be written in such a way that names of individuals be left out. There will be circumstances where someone could be readily identified. Names and other identifying information would be left out.

CHAIRMAN GROSFIELD stated they would have expenses and a small counsel to be used infrequently which would be there for the public officers and directors only through the Commissioner's Office.

Mr. Petesch stated that one member of each party in each house could pick one and then they pick another.

SENATOR BARTLETT commented that the language in SB 115 states that a member of the Commission may not be a public official; public employee, except as the fifth member, who must be chosen by consensus of the other members; candidate; lobbyist or lobbyist's principal; or member of the immediate family of an individual listed . . .

CHAIRMAN GROSFIELD in referring to gifts, stated that "thing of value" is in 2-2-102(2). He suggested an additional sentence which would state "thing of value does not include".

Mr. Petesch commented the phrase is also found in 2-2-104(b) which states "accept a gift of substantial value or a substantial economic benefit tantamount to a gift;".

CHAIRMAN GROSFIELD stated (i) and (ii) ties gifts to public duty and something perceived as a reward for an official action. What does substantial value mean? SB 115 states anything of value does not include a gift which is not used or is returned. He prefers the language "would tend to improperly influence". He asked the committee if they wished to use the \$25 limitation.

SENATOR BAER commented the \$25 limitation was set in 1980 and that should be raised to at least \$50.

CHAIRMAN GROSFIELD stated that legislators need information on difficult issues and it is sometimes hard to determine whether a lobbyist is "tending to improperly influence".

SENATOR BARTLETT commented the rationale for \$25 is that is the amount the lobbyists report.

SENATOR NELSON stated she does not see a difference between someone taking her out individually to dinner to influence her in comparison to the large groups who take all the legislators out to dinner. The large groups have more money to spend.

CHAIRMAN GROSFIELD suggested using current law language for gifts with the exception of adding in \$50 as the definition of substantial value. He also suggested making an exception for educational activities which do not place or appear to place the recipient under obligation and clearly serve the public interest and are not lavish or extravagant. "Thing of value" would be changed to read "thing of substantial value". He recapped that SB 136, Sections 1, 4 and 5 were adopted with some changes. Sections 2 and 3 needed to be addressed further.

Mr. Petesch commented the 6 month and 12 month provisions apply to different situations. The 12 month provision deals with insider trading. The 6 month provision deals with employment, contracting with the state or local government. There are civil penalties provided for certain actions but not others. In the contractual matters, the penalty is voiding the contract. Disciplinary actions are taken by the agency. The civil penalty is provided for in some instances is the informal contested case procedure with the Commissioner's Office and then appeal to district court if necessary. In the legislative body, the penalties would be censure or reprimand by the body. There is no penalty under 2-2-104 which is the rules of conduct for everyone. This would include gifts. Double dipping is prohibited but there is no penalty. The law would require that you give up one salary. There is also the prohibition on being registered as a lobbyist. The only area which has no penalty is accepting gifts.

SENATOR BAER, referring to gifts, stated the penalty could be providing for restitution of the value of the gift accepted and then add the penalty clause. The embarrassment of restitution could be sufficient as well as expensive.

SENATOR BARTLETT questioned whether Section 2 of SB 136 was adopted.

Mr. Petesch commented this section is included in the present draft. Restitution would go to the general fund of the entity employing the individual.

SENATOR BISHOP suggested treble restitution.

SENATOR BAER commented it would be a good deterrent and could get expensive.

SENATOR BARTLETT wanted to see it stay at the cost and if there was a problem with that it could be changed later. It is the

public exposure and embarrassment which would be as big a deterrent as the dollar amount.

SENATOR GROSFIELD stated the last issue is the vehicle to be used.

Mr. Petesch recommended a substitute bill. The procedure is to choose one of the bills and strike everything after the enacting clause, amend the title and put in the language decided upon.

SENATOR BISHOP suggested that they use SB 136.

SENATOR BAER stated he would be comfortable with that procedure. The committee is modifying existing statute which is what his bill does. SB 115 repeals existing statute. Quite a bit of SB 115 has been incorporated into the substitute bill.

SENATOR BARTLETT commented they might look at using two sections from SB 115. One which prohibited political activity by commission members and one which prohibited lobbying activity by commission members. This would be page 21, Sections 24 and 25. Another concern would be 105(3) which addresses the 12 month prohibition.

SENATOR BAER commented that the committee does not intend to overreach into areas which would be unreasonable to apply 105(3).

SENATOR BARTLETT suggested in the full committee there be some language to modify this section without broadening it so much that it would be meaningless.

Mr. Petesch commented he would like the opportunity to give each member of the subcommittee a copy of the draft before it is submitted as the report to make sure that he has accurately reflected the committee's decisions.

U. M.

DATE

2/13/95

ETHICS SB 115 SB 136

[illegible]

Attach to each day's minutes

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN SENATOR LORENTS GROSFIELD, on
February 14, 1995, at 11:20 AM

ROLL CALL

Members Present:

Sen. Lorents Grosfield Chair (R)
Sen. Larry L. Baer (R)
Sen. Sue Bartlett (D)
Sen. Al Bishop, (R)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Greg Petesch, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Subcommittee Business Summary:

Meeting: SB 115, SB 136

The committee members had earlier been provided a copy of
Amendments to SB 136, First Reading Copy.

CHAIRMAN GROSFIELD referring to page 2, private interest,
commented the only place those words appear is in the disclosure
dealing with contracts.

Mr. Petesch commented they also appear in the statement of public
trust. There are one or two instances where they are used to
match constitutional language.

CHAIRMAN GROSFIELD asked why personal property is included.

Mr. Petesch stated it was in the existing definition of financial
interest.

CHAIRMAN GROSFIELD felt that personal property was excluded.

Mr. Petesch stated personal property was excluded from the disclosure statement. He agreed to exclude personal property from the definitions.

CHAIRMAN GROSFIELD stated that when referring to "public employee" meaning a member of a board, commission or committee, they were referring to quasi-judicial boards only. His questioned whether the Fish and Game Commission was a quasi-judicial board. He felt this may have to read quasi-judicial boards or commissions.

SENATOR BARTLETT stated that executive reorganization work also referred to quasi-legislative. She asked if there were any quasi-legislative boards which are not also quasi-judicial. Every board with rulemaking authority or policy authority also hear contested cases.

Mr. Petesch stated most of those boards would not have the rulemaking authority. The Board of Crime Control is not a quasi-judicial board. They adopt rules but most of these rules are relative to grants.

SENATOR BARTLETT questioned if that was a board which should be pulled in.

CHAIRMAN GROSFIELD stated it would be correct to use the language "quasi-judicial board or commission" or "board or commission with rulemaking authority".

Mr. Petesch stated that would pick up all the professional and occupational licensing boards. Most of those are quasi-judicial, but not all.

CHAIRMAN GROSFIELD commented they used "public employee", "public officer" and "state officer". He asked where a legislator would fit in.

Mr. Petesch explained that wherever a legislator fits in, the language states legislator specifically.

SENATOR BARTLETT, referring to quasi-judicial and rulemaking boards, believed they might fit better into the definition for state officer, which is limited to elected officers and directors of the executive branch of state government. She believes that would make a difference in terms of page 6 and the disciplinary action for violating an ethical requirement. Currently the board people are under the public employee definition and on page 6, line 2, "A public employee who violates this section is subject to disciplinary action by the employee's employer . . ." She believed a board member could not be subject to disciplinary action. A public officer is subject to a civil penalty. She believed boards might fit better under the definition of state officer.

Mr. Petesch commented that when rulemaking authority was added, they used disclosure for state officers. All the boards with rulemaking would then be required to file disclosure statements also.

SENATOR BARTLETT stated that was not her intent. She further questioned the definition of public employee (c) an employee under contract to the state. She believed that to be a contradictory phrase because if a person is under contract that person is not an employee.

Mr. Petesch stated "an employee" could be changed to read "a person".

CHAIRMAN GROSFIELD, referring to page 4, line 2, questioned if there was a penalty for violating (a).

Mr. Petesch stated there was no penalty attached.

SENATOR BARTLETT stated the section which talks about gifts is rules of conduct for public officers, legislators, and public employees. On page 9, section 121, there are additional rules of conduct for public officers and public employees. This does not specify legislators but legislators show up in the text in that section thus (a) could be moved to section 2-2-121.

CHAIRMAN GROSFIELD asked if the committee wanted a penalty for (a), such as \$50 to \$1000 administrative penalty.

The committee agreed they did want a penalty.

SENATOR BARTLETT stated that the rest of that section is about gifts and (a) probably should be in a different section which already has a penalty.

SENATOR NELSON, referring to page 5, line 2, asked if "lavish or extravagant" had been identified.

CHAIRMAN GROSFIELD commented that would be up to the Commissioner.

CHAIRMAN BARTLETT asked if there was an identification of what constitutes a political subdivision of the state. People ask if local government includes schools, fire districts, etc.

Mr. Petesch commented political subdivisions have not been defined but typically any subdivision of the state is anything lower than the state level which has governmental power. This would be counties, cities, towns, school districts, conservation districts, etc. They are subdivisions of the state because their authority to exist comes from the state.

SENATOR NELSON stated that when they say they cannot receive two salaries, they are usurping local control.

Mr. Petesch clarified they cannot receive two salaries from two governmental units for the same time. This has been restricted so it is the same hours of employment.

SENATOR NELSON stated that if a school teacher has negotiated with his own school board that he could receive some salary while he is in the legislature, he couldn't.

Mr. Petesch stated they would affect existing contracts, but a future contract would not be allowed.

SENATOR BAER stated that he had some difficulty with this originally in trying to determine whether this was an ethical consideration. He discussed it with SENATOR ECK and they decided it is an ethical consideration and it should be in the bill. It only affects the actual salary and not benefits.

SENATOR BARTLETT stated that she would be more comfortable if that could be limited to state employees, having two salaries during the same period of time. She felt their discussions were addressing state employees.

CHAIRMAN GROSFIELD, referring to page 6, commented they were giving a heavier penalty to a public employee than they were giving to a public officer. It seemed they ought to be equal or the officer's penalty should be harsher than the public employee. He suggested striking disciplinary action. He assumed there would be some indirect consequences within the agency anyway.

SENATOR BAER commented they could add disciplinary action to the public officer.

CHAIRMAN GROSFIELD asked how there could be disciplinary action by the employee's employer in regard to a person like the governor.

SENATOR BARTLETT questioned whether there needed to be any civil penalty for a public employee if they are subject to disciplinary action. Someone may pay out \$1000 if they could keep their job.

CHAIRMAN GROSFIELD stated they could change this to \$50 and not more than \$500. For a public officer have \$200 and not more than \$1000.

SENATOR NELSON, referring to (3), asked about employees who specialized in a department.

CHAIRMAN GROSFIELD commented that his sense of that issue is that if they open that door, they would be opening a flood gate. This does not only apply to lawyers.

SENATOR BARTLETT commented that was another substantive issue she would like to raise in the committee.

SENATOR BISHOP commented that he agrees with SENATORS BARTLETT and NELSON. This is very important to these employees. They are not using inside information. They are using some expertise they have gained.

Mr. Petesch stated that the provision in existing law which lets people out is the exemption in the sentence that these matters are rules other than rules of general application. If they are rules applied to everyone, the person is not prohibited in actively participating in them, because he knows them well. For example, child enforcement rules apply to everyone. Everyone who has a child support enforcement debt or owes child support, is subject to the same rules. Rules of general application would let that individual out. This should not prohibit an attorney leaving the Child Support Enforcement Division from practicing family law.

SENATOR NELSON, referring to the bottom of page 6, (2), believed that it should read "a conflict created by personal or financial interest" rather than "private interest".

Mr. Petesch commented they changed the defined term from financial interest to private interest in order to conform with the constitutional requirement for public duty versus private interest.

CHAIRMAN GROSFIELD, referring to page 8, (5), questioned the wording "the committee shall determine whether the legislator". This deals with the Ethics Committee within the houses. Do they want the committee to determine that or do they want the committee to advise the legislator whether the legislator should participate in the action. Should the committee advise?

The committee decided to use the word "advise".

CHAIRMAN GROSFIELD, referring to page 9, Section 7, questioned why the title line didn't list legislator when it is discussed in the text. He was troubled with (2)(a) which referred to a legislator not using public time, facility, or equipment for private business purposes. He needs to call his foreman at home to see how the business is going while he is in Helena. The rules state they can at least use the phone. He is troubled by including legislator in (2).

SENATOR NELSON believed there could be an exception for legislators during legislative session.

Mr. Petesch stated the area dealing with legislators is (e) and (g). He could take legislator out of (2). Subsections (e) and (g) would apply to everyone. The rest would only apply to public officers and employees.

SENATOR BARTLETT commented there is an entire section which deals with conduct of legislators and this could be limited to officers

and employees and put those provisions from this which affect legislators into either 111 or 112.

SENATOR ECK questioned how this applied to university personnel.

Mr. Petesch stated university personnel are state employees. This provision is being expanded to local government employees.

SENATOR BARTLETT referred to the Commissioner being able to assess the cost of a contested case proceeding against the losing party. She had intended that to be permissive but not required in absolutely all cases. SENATOR BARTLETT also referred to page 9, (b), which talks about engaging in a substantial financial transaction. Substantial financial transaction has not been identified.

Mr. Petesch commented that "substantial value" has been defined as something of \$50 or more. That was in relation to gifts. The wording could state a "financial transaction of substantial value" and that would have a \$50 threshold.

CHAIRMAN GROSFIELD believed that a substantial financial transaction would be more than \$50. He then referred to page 16, "each state agency shall adopt the model rules of conduct and shall provide a mechanism". He believed that there should be discretion for a state agency which adopts these model rules of conduct. He would add in: "Each state agency shall adopt the model rules of conduct and such additional rules as may be appropriate for the specific circumstances of the agency."

SENATOR BARTLETT referred to (1)(b) wherein a candidate would file a business disclosure at the time the candidate files for office. She believed it would make more sense if it is within five days after filing for office. At the time that you file, you would get the business disclosure file which you would fill out and it would have to be turned in within five days after.

CHAIRMAN GROSFIELD asked Mr. Argenbright if the five day limitation was by rule or by law.

Mr. Argenbright stated it was by rule.

Mr. Petesch stated it would be law now.

CHAIRMAN GROSFIELD suggested changing it to not less than 10 days.

SENATOR BARTLETT commented that they do not have to file the business disclosure now. Anyone who has not already filed their campaign committee report, which is the establishment of their campaign committee with the Commissioner, is required to do that within five days after filing. That is what she is trying to conform with.

CHAIRMAN GROSFIELD referred to page 17, (d) "all real property other than a personal residence". He thought that should read, "all real property other than a personal residence and adjacent land". He asked why it was important to disclose real property at all?

SENATOR BARTLETT commented that if the person owned 14 rental units in addition to a home that would be important to disclose.

CHAIRMAN GROSFIELD referred to (c)(i) "the value of which is greater than \$1000". Is \$1000 the right threshold?

Mr. Petesch stated he could take out the value. The thought is that you can have an easement, which is an interest in real property. You can also have a license in real property and that may be around \$1000.

CHAIRMAN GROSFIELD commented that (c) states he must list each business, firm, corporation, etc. He might list Joe's, Inc. No one knows this business. This could read, "for each entity listed under (c) or (d) a brief description of the purpose of the entity should be provided."

SENATOR BARTLETT had a question regarding advisory opinions on page 22. Everything in the bill states they are confidential; however, this states "unless the person whose affairs are involved discloses the opinion." There may be other people in the opinion who do not waive this privacy.

CHAIRMAN GROSFIELD suggested a period after the word confidential.

SENATOR BARTLETT stated they do not address any conditions in relation to anyone else named in the opinion. It could state that the identity of the person requesting the opinion is confidential unless the person whose affairs are involved discloses the opinion.

Mr. Petesch commented the thought is that if he is the subject of an advisory opinion whether it is brought by his request or someone else's, it exonerates him. He may want to make it public. If it chastises the person, it can only be released through his own efforts.

SENATOR BARTLETT stated she would be satisfied if it is an advisory opinion about her and she decides to make it public, she is still obligated not to release the names of other people involved in that opinion. They could do so if they choose to do so. She would have to respect the privacy of other people and not release their identity.

Mr. Petesch stated he could add that a person making an advisory opinion public must protect the confidentiality of everyone unless the person releases.

SENATOR BARTLETT further stated that the technical point on page 21 about the presiding officer of the commission being elected by a majority of the members. She thinks that may be in conflict with 5-1-102, which is how reapportionment is handled. Two and two are appointed and then they select the fifth. That statute specifies that the fifth member is the chair. Page 19 (2) the language states, that the members are appointed in the same manner as prescribed in 5-1-102.

CHAIRMAN GROSFIELD commented they may wish to decide among themselves who would be the chair. It may make it harder to find someone to serve on this commission if they knew that they would automatically be the chair.

Mr. Petesch stated they only stated how the members were chosen. The specific provision on electing their chairman would govern.

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 136

Call to Order: By CHAIRMAN LARRY BAER, on April 11, 1995, at
5:10 p.m.

ROLL CALL

Members Present:

Sen. Larry L. Baer, Chairman (R)
Rep. Matt Denny, Vice-Chairman (R)
Sen. Lorents Grosfield (R)
Sen. Dorothy Eck (D)
Rep. Vicki Cocchiarella (D)

Members Excused: Rep. Rose Forbes (R) proxy to Rep. Matt Denny

Members Absent: none.

Staff Present: Greg Petesch, Legislative Council
Tina Price, Secretary

Discussion: CHAIRMAN LARRY BAER stated he believed the best approach would be to first go over the House Standing Committee Report Amendments.

SEN. LORENTS GROSFIELD suggested the committee deal with amendments to the bill first and return to amendments to the title afterwards.

CHAIRMAN BAER referred to Page 2, Line 18 where substantial had been stricken. He explained the Senate Subcommittee had inserted substantial and had also included the \$50 figure. He reported \$50 had been stricken by the Joint Select Committee and substantial had been deleted by the House Rules Committee. He stated the words being stricken had been an issue on the Senate floor.

SEN. DOROTHY ECK stated she thought the problem had been regarding gifts, Page 2, line 18 dealt with compensation. She did not have a problem striking substantial as it related to compensation.

CHAIRMAN BAER reported he had discussed the issue with SEN. VAN VALKENBURG who had a substantial problem with the issue. CHAIRMAN BAER stated he was neutral on the particular issue but

reinserting "substantial" and possibly "exceeding \$50" would go a long way in reaching agreement on the bill for many people.

REP. MATT DENNY clarified there were two issues; the definition of compensation and the definition of what types of gifts were not allowed. In his opinion compensation would be any money or thing of value. He could not see what the problem with the omission of substantial as far it related to compensation.

CHAIRMAN BAER reported there had been some paranoia even a cup of coffee would be considered illegal. **REP. DENNY** asked if a cup of coffee would be a gift or compensation. **CHAIRMAN BAER** replied it could be considered either way.

SEN. GROSFIELD referred to the concept of substantial value and asked where the term compensation appeared throughout the bill. **Greg Petesch** replied Section 2-2-111 was the statutorial reference for legislators which appeared on Page 7, section 5, (1) of the reference copy of the bill. He reported the Speaker had offered the amendment to strike "substantial" in the House Rules Committee. He explained the Speaker had noted the way the bill read would have made it legal to sell a vote for \$10.

SEN. GROSFIELD asked how compensation on page 7, line 15 was different from a gift. **Greg Petesch** stated a gift could be after-the-fact. A legislator could not accept any type of compensation, other than their salary, for supporting or opposing legislation. Gifts could be accepted for past actions taken. He cited an example of a legislator carrying a bill for an interest group and stated it would be illegal to collect compensation for that.

CHAIRMAN BAER expressed compensation for official duty needed to be distinguished from a gift for past performance.

SEN. ECK noted under the definition of a gift there was a list of items that would not be considered gifts of substantial value. She reminded the committee the bill had originally stated a gift of substantial value means a gift of less than \$25 and the amount had been amended to \$50. She stated having a specific amount makes people more comfortable about accepting a cup of coffee. She referred to page 5, lines 15-24 and noted a gift would have to tend to improperly influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties. She further noted (D), lines 17-19 were primarily existing law. She alleged people were not aware of existing law; that section would effectively mean a lobbyist could not take everyone who voted for his bill out to dinner because it would be a reward for service.

CHAIRMAN BAER stated the problem was in trying to define to what extent a gift would influence a persons official action. He suggested if "substantial" and "\$50" were reinserted the definition would be clear and questions in people's minds as to what kind of gift are unacceptable would be alleviated.

SEN. GROSFIELD stated he had a copy of the bill as the Senate Judiciary Subcommittee on Ethics had amended it. He reported the committee spent a lot of time on SB 136 and the bill then went to the appointed Joint Committee. He stated in the Judiciary Subcommittee's version of the bill the definition said "substantial value means an amount equal to or greater than \$50 for an individual." He believed that definition made sense and took away some of the subjectivity. Without a fairly objective definition, several questions come up regarding a cup of coffee or meeting with a few people who are interested in a bill over lunch. It leaves room for the question would that be a gift or would it be compensation. He insisted a clear definition of substantial value would clarify the uncertainties.

SEN. ECK suggested the definition could be added to amendment 4 on the House Rules Committee amendments. It could read "substantial value means....." and then add "a gift of substantial value does not include...."

REP. DENNY stated the definition seemed clear on amendment 4 stating "a gift does not include food and beverages consumed on an occasional participation...." He suggested that exception could be widened. He resisted inserting \$50 because it left room to wonder would \$40 then be okay. He explained in setting a number of \$50 a \$40 gift wouldn't be considered unethical and that would leave a loophole in the law. He added the Rules Committee was concerned about leaving the loophole.

CHAIRMAN BAER reported the Senate had great difficulty with the loss of the word substantial. **SEN. VAN VALKENBURG** had some real concerns about the omission. He understood the House's concern about substantial being included in the definition of compensation; no one should receive any compensation for services rendered as a legislator. He added the definition of a gift was a totally different area and asked the Committee to keep that in the proper concept. He asked if the Committee wished to alter the definition of compensation.

SEN. ECK claimed the Committee should deal with defining substantial value and asked **SEN. GROSFIELD** to read the definition of substantial value from Judiciary Subcommittee's version of the bill. He read "substantial value means an amount equal to or greater than \$50 for an individual".

CHAIRMAN BAER suggested that definition should be considered because of the concerns over any type of compensation, a cigarette, candy bar, cup of coffee, etc. Adding \$50 would clarify that substantial did not include anything under \$50. The original amount was \$25. **Greg Petesch** stated \$25 had been chosen to coincide with the lobbyist reporting threshold. **REP. DENNY** stated in the area of compensation the bill stated "compensation means any money, a thing of value or economic benefit". He did not see how substantial in that definition would make a difference because of the economic benefit wording. **CHAIRMAN**

BAER suggested the wording could be used in conjunction with SEN. GROSFIELD'S recommendation that the amount of \$50 be used to alleviate peoples fears of appearing to accept compensation for receiving a minor gift or a dinner.

SEN. ECK reasoned the Committee could strike "a thing of value" from the definition. She explained food and beverages would not fall under "any money or economic benefit". Compensation is considered to be pay; only a very large gift could be considered compensation.

REP. DENNY stated he did not think striking "thing of value" would create a problem in the House.

Motion/Vote: SEN. ECK MADE THE MOTION TO STRIKE "THING OF VALUE" ON PAGE 2, LINE 18, OF THE SALMON BILL. The motion CARRIED UNANIMOUSLY.

Discussion: SEN. GROSFIELD asked at what point a gift would be considered an economic benefit. Greg Petesch replied a gift was probably unlikely to be considered an economic benefit in most circumstances. The gift would have to have an incredibly substantial value to be considered an economic benefit, i.e. a gift of shares of stock, etc.

CHAIRMAN BAER stated there would still be a burden of proof to show the gift was given in return for services rendered. That qualification would separate compensation from the gift section for other purposes.

SEN. GROSFIELD stated if \$50 were included in the definition of a gift than a gift of greater value may be considered an economic benefit. SEN. ECK referred to page 3, line 2, and suggested inserting "a gift of substantial benefit means a gift in the amount equal to or greater than \$50" and proceed to define what it does not include. REP. COCCHIARELLA argued the \$50 amount did not make the definition any clearer. She reported often committee chairs or a person carrying a bill received something like a piece of artwork. She wondered how a legislator was to determine the value of a gift, were they expected to ask or were they to turn down any gift they guessed might have a \$50 value.

REP. DENNY reminded the committee an award publicly presented in recognition of public service would not be considered a gift. REP. COCCHIARELLA asked what about a \$65 bouquet of flowers sent from a group that a legislator carried a bill for. SEN. ECK stated that would not be included and she read from the bill "a gift of substantial value does not include an award publicly presented..." REP. DENNY suggested "or thing" could be inserted after "award" which would include art objects, gavels and bouquets presented publicly.

SEN. GROSFIELD agreed adding "or thing" would be a good idea. The award wording gave the impression the item had to be along

the lines of a plaque. **REP. COCCHIARELLA** asked if publicly presented would include a gift that showed up on a legislator's desk or arrived in the mail. **CHAIRMAN BAER** suggested striking "publicly". **REP. DENNY** noted that would leave the bill where you could drive a truck through it. **CHAIRMAN BAER** stated the Committee could nitpick the bill forever and still not have satisfactory language. He added some discretion would have to be left to the Ethics Committees of both Houses and the Commissioner of Political Practices, Mr. Argenbright.

SEN. GROSFIELD speculated when SB 136 passed the groups who were sending the flowers would realize they would have to back off. He explained the bill had originally had an amount of \$25, to coincide with the lobbyist reporting threshold from 1982. The amount of \$50 was chosen based on the \$25 plus inflation.

Motion: **SEN. GROSFIELD** MADE THE MOTION TO ADD "MEANS A GIFT WITH A VALUE OF \$50 OR MORE FOR AN INDIVIDUAL" AS (A) ON PAGE 3, LINE 2.

Discussion: **REP. DENNY** stated the whole point of the bill was to prevent a public officer, legislator, or public employee from accepting a gift that would tend to improperly influence them to depart from their duties or a gift that they knew a reasonable person would feel was a reward for official action taken. He explained to him that meant the point was to not accept gifts regardless of their value. He referred to the concern raised on the Senate floor regarding items, gavels, food taken in meetings, etc. He argued the operative thing was not the value of gifts but whether the gift would tend to improperly influence the individual. He insisted defining the amount would open the door for accusations that the gifts were influencing people; he stated it would be better not to have the accusations at all. **CHAIRMAN BAER** stated not specifying an amount would make anyone with flowers on their desk suspect. **REP. DENNY** stated the public's concern was not about flowers. **CHAIRMAN BAER** asked **REP. DENNY** if he really thought a legislator would be influenced by a gift of less than \$50. **REP. DENNY** stated he didn't think the public was concerned about flowers and gavels. The problem he had was defining a point, like \$50, under which a gift was okay. **CHAIRMAN BAER** stated failing to further define a gift with a dollar amount could mean a lobbyist couldn't give a legislator a cup of coffee. **REP. DENNY** argued that would be permitted unless a cup of coffee would improperly influence the person; he did not foresee anyone claiming a cup of coffee would improperly influence a vote. **CHAIRMAN BAER** reported there was much concern over the issue on the Senate floor. **SEN. ECK** suggested the legislators were not aware of the section referred to improper influence. **REP. DENNY** stated it was pointed out on the House floor by **REP. KADAS** that regardless of the gift it had to influence the person or be a reward for service to be illegal. **CHAIRMAN BAER** asked how the determination would be made. **REP. DENNY** stated Commissioner Argenbright would examine the complaint.

CHAIRMAN BAER stated he still felt a minimum criteria should be established for a gift. Without a minimum criteria Commissioner Argenbright could be dealing with frivolous complaints.

Debbie Smith, Common Cause, stated setting a dollar amount would not authorize acceptance of gifts up to that amount because it would be a violation of 2-2-103 Violation of Public Trust. She added not setting a dollar amount would open the door for the acceptance of gifts over the amount. The public was not concerned about the amount of the gift, they were concerned about the amount of influence the gifts had upon the legislator's vote. **SEN. GROSFIELD** clarified that she supported the setting of a dollar amount. **Ms. Smith** stated that was correct.

Mike Pichette, Montana Power Company, suggested changing the bill to read "may not accept a gift with a value in excess of \$50" and strike the qualifications in lines 15, 16, 17, and 18. He stated it would be safe to assume a gift of less than \$50 would not influence anyone. He alleged the bill should read a gift of more than \$50 was unacceptable no matter what category it fell into.

Ed Argenbright, Commissioner of Political Practices, expressed from the perspective of being able to better do his job the more definitively the terms were defined the less subjective the judgement would be.

Garth Jacobson, Secretary of State's Office, reported the issue had been extensively dealt with in the Ethics Commission. The Commission felt the dollar amount would provide a definitive guideline for the people charged with enforcing the law. Leaving poorly defined terms would leave the door open for a whole array of opinions. He further noted in its current form the bill would preclude dinners paid for by lobbyists because they were not public events. He concluded setting a limit and allowing anything under that limit to be acceptable would be the best approach; without a limit it would be impossible to define.

Vote: **SEN. GROSFIELD'S** motion CARRIED WITH **REP. DENNY** VOTING NO.

Motion/Vote: **SEN. GROSFIELD** MADE THE MOTION TO REINSERT "SUBSTANTIAL" ON PAGE 5, LINE 14. The motion CARRIED UNANIMOUSLY.

Discussion: **REP. DENNY** stated there had been concerns about accepting a gavel. **SEN. ECK** noted gavels were usually publicly presented.

CHAIRMAN BAER referred to page 3, line 15 "is not lavish or extravagant". He asked how that would interact with the changes the Committee had made. **SEN. GROSFIELD** stated he was comfortable with that language. He perceived page 3, line 15 as applying to an educational activity in another town and the question would be were the accommodations lavish or extravagant. Were the

accommodations at the country club with an on call chauffeur or was the event a straightforward business trip. **CHAIRMAN BAER** suggested some of the discretion should be left to Commissioner Argenbright. **REP. COCCHIARELLA** stated one issue that had come up was accommodations that would be lavish and extravagant to one person may not be to another. **CHAIRMAN BAER** stated the circumstances had to be considered. The motel may be more lavish and extravagant than the individual would normally use but was the individuals accommodations in the penthouse or the presidential suite. **Mr. Petesch** referred to subsection and stated all of those criteria had to be met to constitute a violation.

CHAIRMAN BAER referred to amendment #5 on page 3, line 18 and reported some people felt that provision went too far in including immediate members of the family. **REP. DENNY** stated that was a whole issue in itself; there were people living with life partners, people who have parents or close cousins living with them, what would be the cut off point.

SEN. ECK recalled at one point the bill had included the members of the individual's household. **SEN. ECK** clarified the current disclosure requirement included the spouse.

SEN. GROSFIELD asked why Page 5 line 1 had been amended. **Greg Petesch** reported **REP. KADAS'** logic had been legislators should be subject to the same civil penalties and procedures for complaints in front of Commissioner Argenbright that other state officers were subjected to.

SEN. GROSFIELD stated the next amendment was on Page 5, lines 12 and 13. **Greg Petesch** explained the amendment on page 5, lines 12 and 13 changed the language to include legislators with public officers and employees. **Commissioner Argenbright** commented expanding his enforcement responsibilities to include legislators would greatly increase the workload and number of complaints to his office thus creating an added expense. **REP. COCCHIARELLA** agreed with Commissioner Argenbright the cost would be greatly increased and added she had tried to strip the amendment on the House Floor for that reason. She did not feel legislators should be treated differently than other officers and employees but she was concerned about the flood of complaints to the Commissioner's office during legislative sessions because a person may hear something on the floor or in committee they disagree with. She noted legislators were protected under the Constitution against those sorts of complaints but that would not control the number of complaints filed.

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REP. DENNY stated was in favor of the amendment. He interpreted the public concern stemmed from a belief that legislators are burying ethics problems in Ethics Committees and there was never any resolution to the problems. The additional costs to the

Commissioners Office would be worth the assurance to the public. **REP. COCCHIARELLA** noted if the provision was considered worthwhile the legislature would have to fund the Commissioner's office accordingly. **REP. DENNY** agreed and added the elimination of the disclosure requirements of 1100 board members would provide a certain amount of the funding. **REP. COCCHIARELLA** compared the ethics bill was like many other pieces of legislation which were passed and but were never enforced because the legislature failed to appropriate money to get the job done. **REP. DENNY** noted **REP. COCCHIARELLA** was assuming there would be a flood of complaints; there may not be. **CHAIRMAN BAER** was not convinced there would be a flood of complaints. He stated he believed the result of the new ethics laws would be many people acting carefully not to embarrass themselves by breaking the rules. He suggested the legislature wait until next session to see how the ethics laws had affected the Commissioner of Political Practice's Office instead of assuming there would be a flood of complaints. **SEN. GROSFIELD** asked if what types of complaints **REP. COCCHIARELLA** was referring to, lobbyists, members of the public, or other legislators. **REP. COCCHIARELLA** stated she could see potential for multiple complaints based on someone disagreeing with a statement on the floor or in committee. She felt the bill should be changed to provide that during legislative sessions ethical matters should be dealt with through the Ethics Committees. She explained an amendment to that effect would eliminate the distraction factor of frivolous complaints.

SEN. ECK suggested limiting referrals to Commissioner Argenbright to not include complaints made during the legislative session. **REP. COCCHIARELLA** stated the Constitution currently provided for immunity during session. **SEN. GROSFIELD** assumed the constitutional immunities would still apply unless there was an obvious and real ethical violation. **Greg Petesch** stated there was a question of whether the delegation of jurisdiction to the Commissioner would in effect be a waiver of speech and debate clause immunity. He explained under current law speech and debate clause immunity attached for any legislative act. He further explained under SB 136 immunity would potentially be waived because legislators were the ones delegating the authority to the Commissioner. **SEN. ECK** clarified the immunity did not apply to someone filing a complaint regarding campaign practices while the legislature was session. **Mr. Petesch** stated that was correct because campaigning was not a legislative act. **SEN. GROSFIELD** stated waiver of legislative immunity was not the intent of the bill. He suggested an amendment should be drafted to exclude legislative acts from the delegation of authority to protect the constitutional immunity. **REP. DENNY** asked what the amendment would exclude and wondered if it would exclude gifts. **Mr. Petesch** stated the bill specifically stated gifts for legislative acts. **REP. DENNY** clarified the amendment would provide that during the session complaints could not be brought to the Commissioner. He noted the bill in section 14 stated the legislature was responsible for endorsement of the provisions of the parts concerning legislators. He reasoned by default,

without any changes to the bill, during the session complaints would have to go to the Ethics Committee. **Greg Petesch** stated that was incorrect. Current law provided anyone could bring a complaint to the Commissioner under sections 15 and 16 and SB 136 stated enforcement for legislators was provided in sections 15 and 16. **Mr. Petesch** stated inserting an exception for legislative acts would at least create another hurdle to overcome with the Commissioner and the Commissioner could determine whether or not a legislative act was involved. He was unsure of how to word the exception but suggested on page 4, line 29 "except in matters involving a legislative act" could be inserted.

Motion/Vote: SEN. GROSFIELD MADE THE MOTION TO AMEND PAGE 4, LINE 29 TO EXEMPT LEGISLATIVE ACTS. The motion CARRIED UNANIMOUSLY.

Discussion: CHAIRMAN BAER referred the change from should to may on page 7, lines 25-29. He stated the Senate was not willing to give up their rules whereby they are required to vote on all issues. He suggested reinserting "joint rules". **REP. DENNY** explained there seemed to be some confusion on the issue; "joint" had been stricken to allow the Senate to continue to require a vote on all issues. **Mr. Petesch** explained the bill's present form would allow both Houses to operate under their current rules with the additional determination of when a conflict of interest arose. **SEN. GROSFIELD** referred to lines 29 and 30 and asked if under SB 136 the Senate could pass a stricter rule and enforce it. **Mr. Petesch** believed that was correct. He clarified the lines regarded permissive voting after the disclosure of a conflict. **REP. DENNY** suggested inserting on line 30 "the legislator may, subject to the legislative rules, vote..." would clear up the confusion.

Motion/Vote: REP. DENNY MADE THE MOTION TO INSERT ON PAGE 7, LINE 29, "SUBJECT TO LEGISLATIVE RULE". The motion CARRIED UNANIMOUSLY.

Discussion: CHAIRMAN BAER referred to page 9 amendments 15, 16, 17, & 18. **Garth Jacobson** stated the exclusions were added to acknowledge there might be instances where certain activities could be combined. He gave an example of the Governor going to Jordan to speak to the Rotary Club and agreeing to speak to the Pachyderm Club while he was in town. He stated the test would be if the event was simply incidental to the trip he already planned. If the campaign purpose was the primary reason for the trip it would not be permitted. **CHAIRMAN BAER** noted the bill originally stated "political or campaign activity" but the House struck political. **REP. DENNY** stated the reasoning for the change was the difficulty in defining a political activity. There was the question if attending a committee hearing would be a political activity and would therefore have to be done on his own time. He added there were many public officials whose jobs could be considered political. He noted the other issue was the

disclosure of costs on a document. He summarized the bill had said an elected public official couldn't use public money or time to print the information but then made the exception that the public official could use public resources if the materials were stamped with the costs. He stated in effect the exception cancelled out the intent. **CHAIRMAN BAER** declared lines 19-25 superseded the intent of the bill and legitimized the very acts they had attempted to prohibit. He noted simply printing the cost to the taxpayers of producing the pamphlet did not solve the problem.

SEN. ECK state she believed it was important to allow a public official to issue a public statement concerning matters within the scope of the official's office. She insisted public official's should not be prohibited from issuing statements regarding their office. **REP. DENNY** explained the official would not be prohibited from making a statement, they would simply be prohibited from making the statement on public time if it concerned a campaign issue. **SEN. ECK** posed the situation of a ballot issue for streets and roads and the mayor was asked to make a speech on the issue and asked if the mayor would be allowed to make the speech. **REP. DENNY** replied the mayor could if it was done on his own time. **SEN. ECK** asked if the mayor's office could distribute a fact sheet. **REP. DENNY** stated the public did not believe that was a proper use of public funds since public funds are not available to fund the opposition. **CHAIRMAN BAER** stated the problem came from public officials issuing statements which did not contain factual information and in some instances the statements were threatening. He stated allowing an exclusion via a disclosure of the cost of producing the material would do substantial damage to the intent of the bill. The goal was to prevent people from using public time and resources to express their own ideologies. **SEN. ECK** asked if a legislator was carrying a bill and wanted to prepare a fact sheet or charts and graphs, they would be prohibited from doing so because the opposition could not. **REP. DENNY** an opposing legislator would have access to the same resources. **CHAIRMAN BAER** clarified the particular section of the bill only applied to public officers and employees, not to legislators. **REP. DENNY** reiterated the bill in its current form only applied to campaign activities. **SEN. ECK** argued a mayor's duty included bringing information to the public. **CHAIRMAN BAER** stated a public official using his position to influence an election with personal ideologies violated first amendment rights according to some supreme court judges. He stated using public resources to express personal views was wrong and needed to be prohibited. He added allowing lines 19-25 to be reinserted in the bill would completely contravene the entire intent.

SEN. GROSFIELD referred to the first sentence on lines 19 and 20 and wondered if that sentence could be reinserted with the insertion of the word "oral" before public statement. He argued mailings cost money but oral statements did not. **CHAIRMAN BAER** and **REP. DENNY** agreed that would be acceptable. **REP.**

COCCHIARELLA stated the issue would need to be clarified because a press release may be considered an oral statement but was often issued on paper. REP. DENNY stated the intent was public money would not be used for campaign purposes. SEN. ECK asked what the Governor's options would be during a campaign period if he wanted to issue a press release. Would he have to leave his office and building. REP. DENNY replied that would be one option or a member of his campaign committee could come to his office and take dictation of his oral statement and issue it as a press release. CHAIRMAN BAER stated the issue was campaign activity and he did not feel a public official had any position to say anything on the job that would affect any campaign activity on a ballot issue. He stated the whole crux of the matter was the influence by people who have elected or appointed power and are abusing it. SEN. GROSFIELD reported during the last session the sales tax issue was being heard in the Taxation Committee. The Governor, being a proponent of tax reform, came to the taxation hearings and testified. Was that the sort of activity the Committee wished to prohibit. CHAIRMAN BAER stated that sort of activity was authorized by law and properly incidental. REP. DENNY added the activity was a political activity and would not be subject to the restrictions. Greg Petesch clarified an act was not considered campaigning until the issue qualified for the ballot. SEN. ECK gave a supposition. The legislature approved a Tax Reform Task Force and some of the members of the Task Force were public officials. The Task Force came up with a recommendation for an initiative to implement the findings of the study. Would the members of the Task Force who were public officials be allowed to give public speeches regarding the Task Force and recommended initiative. CHAIRMAN BAER stated at the point the findings of the study became a ballot issue the speeches would then become campaigning. Coming before a legislative committee would be totally different from going out to the public on public time and using public resources to support or oppose campaign activity leading to a ballot measure. He added reinserting line 19 and 20 as SEN. GROSFIELD proposed and would be opening the door for public officials to continue the abuse of their positions.

Motion: SEN. GROSFIELD MADE THE MOTION TO REINSERT ON PAGE 9, LINE 14 BEGINNING WITH "PERSUADING" THROUGH THE END OF LINE 18.

Discussion: Greg Petesch asked if that would include the stricken "political or". SEN. GROSFIELD replied it would not.

REP. DENNY asked if the intent was to allow an elected public official to issue a statement. SEN. ECK replied if the statement were incidental to another activity. CHAIRMAN BAER explained the language was specifically inserted to exempt the Governor and his staff, the executive department, from any legal problems in testifying before legislative committees.

{Tape: 2; Side: A}

Vote: SEN. GROSFIELD'S motion CARRIED WITH CHAIRMAN BAER VOTING NO.

Discussion: CHAIRMAN BAER referred to lines 19-25 and asked the committee if they wished to make any changes. SEN. ECK stated a public statement would be covered if it was properly incidental. She noted the situation would require a judgement call each time.

SEN. ECK referred to the inserted language "this subsection does not apply to the preparation of official voter information pamphlets". REP. DENNY commented the section should be modified to read "as authorized by (MCA)" to specify exactly what the bill referred to. REP. COCCHIARELLA asked if SB 136 would limit a local government from issuing a voter pamphlet where proponents and opponents views were expressed. Greg Petesch stated there was no provision for voter pamphlets by local governments under current law. Garth Jacobson stated the only provision was to allow local governments to issue an explanation sheet for changes in public government. He added some local governments provided information but it was not authorized by law. REP. DENNY stated his concern was the local government pamphlets would not necessarily present the opposition's point of view and would therefore, circumvent that portion of the law. REP. COCCHIARELLA stated perhaps the line could read "unless both sides are presented". Mr. Petesch noted the whole sentence may be moot because of the reinsertion of "properly incidental to another activity required or authorized by law"; the pamphlets were required by law.

Motion/Vote: SEN. ECK MADE THE MOTION TO STRIKE PAGE 9, LINE 25 BEGINNING WITH "THIS SUBSECTION" THROUGH LINE 26. The motion CARRIED UNANIMOUSLY.

Discussion: SEN. GROSFIELD asked Debbie Smith about page 9, line 27 and 28. Ms. Smith stated, even as amended, the section was unconstitutional. The bill had a severability clause which provided if it was challenged in court the defeated section could be stricken.

CHAIRMAN BAER referred to page 13, line 16. SEN. ECK stated she believed some quasi-judicial boards should disclose. She stressed the members of certain boards were responsible for major decisions. Mr. Petesch informed the Committee the House had attempted to address the issue in REP. ANDERSON'S floor amendment. He stated the members were not required to file the D-1 form but there were required to disclose. SEN. ECK noted prior to being appointed the board members underwent investigation by the legislature. She added the Governor had become more sensitive to investigating prior to making appointments.

SEN. GROSFIELD stated the next amendment was page 13, line 27. REP. COCCHIARELLA referred to page 13, line 27 and noted the bill reduced a requirement legislators were already subject to when

filing a D-1. She cautioned lightening a requirement could raise an issue. REP. DENNY pointed out they may be lightening one requirement but at the same time additional items were required. CHAIRMAN BAER reported there had been much discomfort on including the family. SEN. GROSFIELD stated for the record the only section contained in current law was subsection c on page 14. REP. COCCHIARELLA stated that was true according to statutory law by the requirements on page 13, line 27 was disclosure they were currently required to give on their D-1 forms.

Motion: SEN. ECK MADE THE MOTION TO LEAVE "OR A MEMBER OF THE INDIVIDUALS IMMEDIATE FAMILY" ON LINE 2, PAGE 14.

Discussion: CHAIRMAN BAER asked Commissioner Argenbright to confirm that the disclosure was a current requirement. Commissioner Argenbright state the Judiciary Subcommittee investigated and found that the D-1 requirements exceeded current law. SEN. GROSFIELD referred to page 13, line 26 "the statement shall provide the following information: name, address, and type of business of the individual and each member of the individuals immediate family". He clarified that was current law. Reinserting the language on line 2 would add the requirement of disclosure of professional entities and trusts. He stated that would extend beyond current law but if the language was not inserted on line 4 or line 7 the requirement would not be expanded to additional areas.

REP. DENNY wondered if the point was to disclose information about grandma. He stated under the definition if he lived with someone they would not be included in the disclosure. SEN. GROSFIELD suggested SEN. ECK include in her motion reinserting lines 15 and 16 since they were current law.

SEN. ECK withdrew her motion and explained unless the section were completely redone it did not make much sense to simply disclose. She suggested on page 13, line 27, the name, address, and type of business of the individual and each member of the immediate family should be included. CHAIRMAN BAER stated the requirement was current law which had been deleted. He noted putting the language back in would make a lot of people happy. SEN. ECK noted the extent of the disclosure was merely disclosing who the immediate family was. REP. DENNY stated he had no problem with the concept but believed line 15 should be modified to read "spouse or life partner".

Motion: SEN. ECK MADE THE MOTION TO REINSERT PAGE 13, LINES 27 & 28, AND REINSERT ON PAGE 14, LINE 15 & 16.

Motion: REP. DENNY MADE A SUBSTITUTE MOTION TO REINSERT PAGE 13, LINES 27 & 28 , AND REINSERT PAGE 14, LINES 15 & 16 ADDING "OR LIFE PARTNER" AFTER SPOUSE.

Discussion: REP. DENNY explained he did not understand why married couples should have to disclose when couple who choose not to have a contract are not required to disclose.

Vote: REP. DENNY'S substitute motion FAILED WITH SENATORS BAER AND GROSFIELD VOTING NO.

Vote: SEN. ECK'S original motion FAILED WITH REPRESENTATIVES FORBES AND DENNY VOTING NO.

Discussion: SEN. GROSFIELD stated the next amendment was on page 15, lines 28 & 29. Greg Petesch informed the committee the speech and debate immunity, legislative acts immunity, would need to be reinserted on this section.

Motion/Vote: SEN. GROSFIELD MADE THE MOTION TO INSERT THE LEGISLATIVE ACTS IMMUNITY CLAUSE. The motion CARRIED UNANIMOUSLY.

Discussion: SEN GROSFIELD asked for Ms. Smith's input on amendment #30. Debbie Smith stated on the second part of the amendment, allowing the Commissioner to adopt rules, seemed to be a fine idea. She agreed he may have occasion to need rules to flush out the body of the act. She referred to (4), line 17, and stated that would safeguard important privacy interests. She could see the potential for someone to abuse the process by filing frivolous complaints and damaging someone's reputation. She suggested the committee clarify whether the information would become public in the event of an appeal. The records made public after a hearing may not be everything that goes up on appeal. The legislature may want to clarify which information was open for public inspection in the event of an appeal. CHAIRMAN BAER stated it was essential to comply with existing open meeting law which places the discretion of whether or not the public's right to know exceeds the right of personal privacy with whomever was in charge of the hearing. He added the appeal should be consistent with the hearing. Ms. Smith noted, as written, it was not consistent. Ordinarily an administrative appeal record was public but subsection (4) stated everything was not public. Mr. Petesch stated once the appeal point was reached the issue would go to District Court and everything would be public. Ms. Smith stated she did not understand why a provision could not be made to ensure the privacy of certain documents in the event of a court case. Garth Jacobson noted the issue was the protection of the integrity of the investigation process. Once the issue went to hearing all information would be disclosed and become a part of public record. He added if the matter kept appealing up the ladder the person appealing would in effect waive their right to privacy. Mr. Petesch noted the intent was if the Commissioner investigated and found no basis and dismissed the complaint, the public would have no right to know the unsubstantiated allegations. If the Commissioner found the complaint substantiated then the public may have the right to know. If the person bringing the complaint appealed the charged individual

would have the Commissioner's determination that there was no basis for the complaint as some sort of protection.

SEN. ECK asked **Commissioner Argenbright** if he foresaw a concern with phone calls seeking clarification of the ethics rules. She asked if the bill should state the Commissioner may offer informal advisory opinions or may refer requests to the Commission. **Commissioner Argenbright** replied he was more concerned that the funding for SB 136 was insufficient to provide enough staff time to deal with the ethics issues.

REP. DENNY referred to page 18, line 10 and explained the intent was to clarify the Ethics Commission would not meet on appeals of issues not included in SB 136.

SEN. GROSFIELD advised **Mr. Argenbright** not to expect his fiscal situation to improve before the end of the session. He asked if there were issues in SB 136 which should be considered to alleviate the burden on the Commissioner's Office. **Commissioner Argenbright** stated because of the numbers of the people affected by SB 136 the potential for frivolous complaints was enormous. He added his approach had been if the legislature was going to pass SB 136 they needed to also fund it. He reported he would do the best he could in enforcing the bill but with inadequate funding he did not anticipate everyone being well served by SB 136. **CHAIRMAN BAER** reiterated the process was highly experimental and the best approach would be to wait and see how much of a fiscal burden was produced. He added after some time was taken to see how many complaints were generated by SB 136 the legislature would have a better idea of how much funding was necessary. **REP. COCCHIARELLA** stated the legislature was guilty of passing legislation session after session and failing to provide the funding to make the legislation work. She suggested the bill should be postponed until the legislature was truly committed to the bill and was willing to fund it accordingly. She contended each agency could monitor its own ethics rather than place the burden on the Commissioner's Office. She argued it was unethical to pass a bill without funding rendering it unenforceable. **REP. DENNY** reported there was \$200,000 in HB 2 for SB 136. **SEN. ECK** noted the Ethics Bill was no more underfunded than any other program.

SEN. GROSFIELD asked **Mr. Argenbright** if a delayed effective date for the Ethics Commission would help. **SEN. ECK** believed having the Commission named and in place would make a difference in public perception. She added the fact that there was an Ethics Commission would give the perception that the state was serious about ethics. **CHAIRMAN BAER** agreed the statutory changes alone and the education provided in SB 136 would be a strong deterrent to ethical violations.

SEN. GROSFIELD referred to page 8, lines 18-20 regarding a class that would be so narrow as to have a personal impact. He contended it was not defined specifically enough for legislators

to understand when they were required to disclose. **Greg Petesch** explained the intent was not to preclude ranchers from voting on livestock issues. So long as the class included all ranchers there would be no conflict of interest. He added at the point the issue became a tax break for an exotic species of livestock raised by only a handful of individuals in the state, and a legislator happened to be one of the ranchers affected there would then be a conflict of interest. **SEN. ECK** speculated the Senate and House Rules would further define the requirements and procedures for disclosure. **SEN. GROSFIELD** expressed concern that depending on how a class was described it could become very narrow. **Mr. Petesch** referred to lines 15 and 16 of existing law for guidance. The bill read a conflict did not arise from legislation affecting the membership of a profession, occupation or class. **SEN. ECK** stated the matter of disclosure should not be a concern. There was no risk in disclosing at the point a legislator even suspects their situation may be more affected than others in a class.

{Tape: 2; Side: B}

Greg Petesch stated the Committees had been incorporated by reference into the bill to allow them to determine for the body the types of disclosure they felt was necessary. **CHAIRMAN BAER** noted the disclosure provision was current law, SB 136 simply narrowed the class. **Mr. Petesch** stated the intent of the Joint Committee was because they were requiring a legislator to vote and represent their constituent's interests the Joint Committee wanted disclosure of direct personal impacts from legislation. **Greg Petesch** reiterated the language was not drafted to prohibit a legislator from carrying legislation they are knowledgeable of. **SEN. GROSFIELD** stated his concerns stemmed from the word "direct" on line 20. He questioned if that was the proper word. He alleged many pieces of legislation could have a direct personal impact whether the class was narrow or broad. He suggested the word "distinctive" be inserted. He explained distinctive would suggest the legislation would have to impact the legislator differently than others in the class. **SEN. ECK** suggested inserting "greater than other members of his class". **CHAIRMAN BAER** reiterated the worst consequence would be disclosure and the legislator would still be allowed to vote. **SEN. GROSFIELD** reminded the committee there was enforcement provisions in SB 136. He was concerned that the point of required disclosure was unclear. At what point was a class narrow? Was it 20 people? 27½ people? He wondered how a legislator was supposed to know when it was time to disclose. **SEN. GROSFIELD** asked where was a legislator required to disclose, in committee or on the floor. **Greg Petesch** stated disclosure in front of the Committee of the Whole would be on record and the legislator would also need to disclose in Committee. **SEN. GROSFIELD** clarified he did not mind disclosing he just wanted to be clear where and when to disclose. **Mr. Petesch** stated a blanket disclosure could be done at the beginning of the session and filed with the Secretary of the

Senate. SEN. ECK noted in reviewing legislation a legislator would know if there was potential for a conflict.

Motion/Vote: SEN. GROSFIELD MADE THE MOTION THAT PAGE 8, LINE 20 AFTER "DIRECT" INSERT "AND DISTINCTIVE". The motion CARRIED UNANIMOUSLY.

Motion/Vote: SEN. GROSFIELD MADE THE MOTION THAT THE CONFERENCE COMMITTEE REPORT BE ADOPTED. The motion CARRIED WITH REP. COCCHIARELLA VOTING NO.



REPRESENTATIVE ROSE FORBES

HOUSE SEAT # 56

NOTICE OF FREE CONFERENCE COMMITTEE MEETING

SB 136

The FREE CONFERENCE COMMITTEE ON ~~SB-39~~ will meet on TUESDAY, April 11, 1995 at
UPON ADJOURNMENT OF SENATE in Room 437.

April 11, 1995 -- 3:37pm

JUDY KEINTZ, Secretary

Phone: 4797



Rose Forbes

proxy vote to Matt Denny

Free Conference Committee
on SB 136
Report No. 1, April 12, 1995

Page 1 of 2

Mr. President and Mr. Speaker:

We, your Free Conference Committee on SB 136, met and considered:

SB 136 in its entirety

We recommend that SB 136 (reference copy as amended - salmon) be amended as follows:

1. Page 2, line 18.

Following: "money"

Strike: ", " through "value, "

2. Page 3, line 2.

Following: "(3)"

Insert: "(a)"

Following: "SUBSTANTIAL"

Insert: "substantial"

Following: "VALUE"

Insert: "means a gift with a value of \$50 or more for an individual. (b) The term"

3. Page 3, line 3.

Strike: "(A)"

Insert: "(i)"

Renumber: subsequent subsections

4. Page 3, line 13.

Strike: "(I)"

Insert: "(A)"

Renumber: subsequent subsections

5. Page 5, line 1.

Following: "±"

Insert: "(ii) legislators, involving legislative acts, is provided for in [section 14] and for all other acts is provided for in [sections 15 and 16];"

Renumber: subsequent subsection

6. Page 5, line 14.

Following: "of ~~substantial~~"

Insert: "substantial"

Strike: "AN"

Insert: "a substantial"

7. Page 7, line 29.

ADOPT

REJECT

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Following: "MAY"
Insert: ", subject to legislative rule,"

8. Page 8, line 20.
Following: "direct"
Insert: "and distinctive"

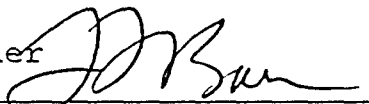
9. Page 9, lines 25 and 26.
Following: "practices" on line 25
Strike: remainder of line 25 through "." on line 26
Insert: "persuading or affecting a political decision unless the
use is:
(a) authorized by law; or
(b) properly incidental to another activity required or
authorized by law, such as the function of an elected public
official, the official's staff, or the legislative staff in the
normal course of duties."

10. Page 15, line 30.
Following: "practices."
Insert: "The commissioner does not have jurisdiction for a
complaint concerning a legislator if a legislative act is
involved in the complaint."

And that this Free Conference Committee report be adopted.

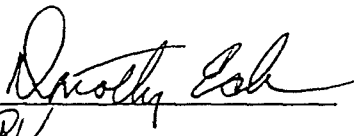
For the Senate:

Baer


Chair

Grosfield

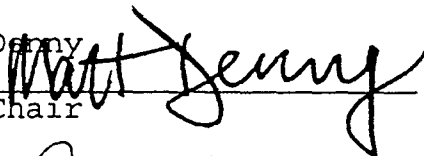
Eck


Amd. Coord.

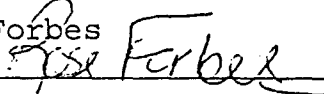

Sec. of Senate

For the House:

Denny


Chair

Forbes


Cocchiarella



HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 136
Representative Kadas

April 8, 1995 9:55 am
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 136 (third reading copy -- blue).

Signed: Kadas
Representative Kadas

And, that such amendments to Senate Bill 136 read as follows:

AMEND HOUSE COMMITTEE ON RULES STANDING COMMITTEE REPORT DATED
APRIL 6, 1995 AS FOLLOWS:

1. Amendment No. 4 in the insert
Following: "Gift of"
Strike: "substantial"

AND THAT SENATE BILL NO. 136, THIRD READING COPY, BE FURTHER
AMENDED AS FOLLOWS:

2. Page 4, line 26.
Following: "of"
Strike: "substantial"
Strike: "a substantial"
Insert: "an"

3. Page 7, line 5.
Strike: "joint"

4. Page 7, line 17.
Strike: "joint"

-END-

ADOPT

72 21

SB 136

HOUSE

REJECT

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HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 136
Representative Anderson

April 8, 1995 12:41 pm
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 136 (third reading copy -- blue).

Signed: Shirley W. Anderson
Representative Anderson

And, that such amendments to Senate Bill 136 read as follows:

1. Page 5, line 24.

Strike: "A"

Insert: "Except as provided in subsection (4), a"

2. Page 6.

Following: line 3

Insert: "(4) When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action."

Renumber: subsequent subsection

-END-

ADOPT

91-C

SB 136

HOUSE

REJECT

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HOUSE STANDING COMMITTEE REPORT

April 6, 1995

Page 1 of 4

Mr. Speaker: We, the committee on Rules report that Senate Bill 136 (third reading copy -- blue) be concurred in as amended.

Signed: _____

Grinde

Larry Grinde, Chair

Carried by: Rep. Denny

And, that such amendments read:

1. Title, line 17.

Strike: "ALL"

Following: "MATTERS"

Insert: "AS PROVIDED IN LEGISLATIVE RULES"

2. Title, lines 22 through 24.

Strike: "POLITICAL OR" on line 22

Following: "ACTIVITY" on line 22

Strike: remainder of line 22 through "LAW" on line 24

3. Page 2, line 17.

Strike: "substantial"

4. Page 3, line 1.

Following: page 2

Insert: "(3) "Gift of substantial value" does not include:

(a) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;

(b) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in

Committee Vote:

Yes 11, No 1.

SB 136

HOUSE

an official capacity;

(c) educational material directly related to official governmental duties;

(d) an award publicly presented in recognition of public service; or

(e) educational activity that:

(i) does not place or appear to place the recipient under obligation;

(ii) clearly serves the public good; and

(ii) is not lavish or extravagant."

Renumber: subsequent subsections

5. Page 3, lines 3 and 4.

Following: "individual" on line 3

Strike: remainder of line 3 through "children" on line 4

6. Page 4, line 14.

Following: "officers"

Insert: ", legislators,"

Following: "and"

Insert: "state"

7. Page 4, line 15.

Strike: subsection (ii) in its entirety

Renumber: subsequent subsection

8. Page 4, line 25.

Following: "ex"

Insert: "(a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests;"

Renumber: subsequent subsections

9. Page 5, line 18.

Insert: "(c) In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment positions to the commissioner of political practices."

10. Page 6, lines 4 and 5.

Strike: "i" on line 4 through "(a)" on line 5

11. Page 6, line lines 7 through 9.

Following: "undertaking" on line 7

Strike: remainder of line 7 through "interests" on line 9

12. Page 6, line 25.

Strike: "JOINT"

13. Page 6, line 26.

Strike: "should"

Insert: "may"

14. Page 6, line 29.

Strike: "shall"

Insert: "may"

Following: "on"

Strike: "the"

Insert: "an"

Following: "issue"

Insert: "on which the legislator has a conflict,"

15. Page 8, line 12.

Strike: "(a)"

16. Page 8, lines 13 through 24.

Strike: "political or" on line 13

Following: "activity" on line 13

Strike: remainder of line 13 through "." on line 24

Insert: ". This subsection does not apply to the preparation of
official voter information pamphlets."

17. Page 8, lines 25 and 26.

Strike: "(a)" on line 25

Following: "employee" on line 25

Strike: remainder of line 25 through "exists" on line 26

Insert: "may not participate in a proceeding"

18. Page 8, line 27.

Strike: "(i)"

Insert: "(a)"

Renumber: subsequent subsection

19. Page 9, lines 1 and 2.

Strike: subsection (b) in its entirety

20. Page 12, line 13.

Following: "official"

Strike: "."

Strike: "member of a quasi-judicial board or commission."

21. Page 12, lines 24 and 25.

Following: "individual" on line 24

Strike: remainder of line 24 thorough "family" on line 25

22. Page 12, line 27.

Strike: "and" through "family"

23. Page 12, line 29.

Strike: "or" through "family"

24. Page 12, line 30 through page 13, line 1.

Following: "individual" on line 30

Strike: remainder of line 30 through "family" on line 1

25. Page 13, line 3.

Strike: "(e)" through "i:"

Re-number: subsequent subsection

26. Page 13, lines 4 and 5.

Following: "individual" on line 4

Strike: remainder of line 4 through "family" on line 5

27. Page 13, lines 12 and 13.

Strike: subsection (5) in its entirety

28. Page 14, line 25.

Following: "officers"

Insert: ", legislators,"

29. Page 14, line 26.

Following: "officer"

Insert: ", legislator,"

30. Page 15, line 14.

Insert: "(4) Except for records made public in the course of a hearing, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are not open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."

31. Page 17, line 1.

Following: "practices"

Insert: "under this part"

-END-

SENATE BILL NO. 136

INTRODUCED BY BAER, KEENAN, BENEDICT, BURNETT, DENNY, MOHL, HARGROVE, BRAINARD,
EMERSON, MESAROS, JORE, JENKINS, CRISMORE, ESTRADA, KEATING, FORBES, PECK,
COCCHIARELLA, PAVLOVICH, MURDOCK, BOHARSKI, VICK, WISEMAN, GREEN, MOLNAR,
HARRINGTON, MERCER, GRINDE, MCKEE, TAYLOR, AHNER, MILLS, L. SMITH, MARTINEZ, OHS,
SLITER, T. NELSON, STOVALL, SIMON, LARSON, R. JOHNSON, WELLS, MCGEE, KITZENBERG, ELLIS,
TREXLER, FUCHS, CLARK, BARNHART, SQUIRES, TUSS, ELLINGSON, SHEA, MENAHAN, RYAN,
SWANSON, CAREY, TROPILA, ELLIOTT, J. JOHNSON, WENNEMAR, HURDLE, HEAVY RUNNER,
HOLLAND, MCCULLOCH, MASOLO, BOHLINGER, LYNCH, JACOBSON, FORRESTER, CHRISTIAENS,
L. NELSON, JERGESON, COLE, MILLER, BROOKE, WELDON, VAN VALKENBURG, FRANKLIN,
PIPINICH, SPRAGUE, HARDING, FOSTER, HARP, GROSFIELD, BISHOP, HOLDEN

BY REQUEST OF THE JOINT COMMITTEE ON ETHICS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS CONCERNING ETHICS;
CHANGING ETHICAL GUIDELINES INTO REQUIREMENTS; REQUIRING LEGISLATORS TO DISCLOSE
INTERESTS RAISING THE APPEARANCE OF IMPROPRIETY AND TO REFRAIN FROM VOTING ON CERTAIN
VOTE ON ALL MATTERS AS PROVIDED IN LEGISLATIVE RULES; PROHIBITING PROVIDING
REQUIREMENTS FOR A PUBLIC EMPLOYEE WHO IS A LEGISLATOR FROM RECEIVING BOTH SALARIES
WHILE SERVING IN THE LEGISLATURE, PUBLIC OFFICER, OR LEGISLATOR TO RECEIVE MORE THAN ONE
PUBLIC SALARY FOR OVERLAPPING HOURS OF EMPLOYMENT; PROHIBITING PUBLIC OFFICERS AND
PUBLIC EMPLOYEES FROM USING PUBLIC TIME, EQUIPMENT, FACILITIES, SUPPLIES, PERSONNEL, OR
FUNDS TO PROMOTE POLITICAL IDEOLOGY OR TO INFLUENCE A POLITICAL ISSUE; AND FOR ANY
POLITICAL OR CAMPAIGN ACTIVITY PERSUADING OR AFFECTING A POLITICAL DECISION UNLESS THE
USE IS AUTHORIZED BY LAW OR PROPERLY INCIDENTAL TO ANOTHER ACTIVITY REQUIRED OR
AUTHORIZED BY LAW; RESTRICTING EMPLOYMENT BY CURRENT AND FORMER PUBLIC OFFICIALS AND
EMPLOYEES; PROVIDING FOR EDUCATION AND TRAINING ON ETHICAL MATTERS; PROVIDING
ENFORCEMENT PROVISIONS FOR ETHICS VIOLATIONS; PROVIDING THAT FILING TAX RETURNS IS AN
ETHICAL REQUIREMENT; CREATING AN ETHICS COMMISSION TO PROVIDE REVIEW OF ETHICS
DECISIONS IN CASES INVOLVING STATE OFFICERS AND STATE EMPLOYEES; AMENDING SECTIONS
2-2-102, 2-2-103, 2-2-104, 2-2-105, 2-2-111, 2-2-112, 2-2-121, AND 2-2-125, 2-2-131, 2-2-302,

1 2-18-102, 5-7-213, AND 13-35-226, MCA; REPEALING SECTION 2-2-132, MCA; AND PROVIDING AN
2 EFFECTIVE DATE."

3
4 WHEREAS, Article XIII, section 4, of the Montana Constitution is unambiguous in its intent of
5 prohibiting conflict between public duty and private interest for members of the Legislature and for all state
6 and local government officers and employees; and

7 ~~WHEREAS, Title 2, chapter 2, part 1, MCA, implementing Article XIII, section 4, of the Montana~~
8 ~~Constitution, dilutes the spirit, purpose, and intent of the constitutional mandate.~~

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 (Refer to First Reading Bill)

12 Strike everything after the enacting clause and insert:

13
14 Section 1. Section 2-2-102, MCA, is amended to read:

15 "2-2-102. Definitions. As used in this part, the following definitions apply:

16 (1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any
17 other individual or organization carrying on a business, whether or not operated for profit.

18 (2) "Compensation" means any money, thing of substantial value, or economic benefit conferred
19 on or received by any person in return for services rendered or to be rendered by ~~himself~~ the person or
20 another.

21 ~~(3) "Employee" means any temporary or permanent employee of the state or any subdivision~~
22 ~~thereof or member of the judiciary, including a member of a board, commission, or committee except a~~
23 ~~legislator and an employee under contract to the state.~~

24 ~~(4) "Financial interest" means an interest held by an individual, his spouse, or minor children which~~
25 ~~is:~~

26 ~~(a) an ownership interest in a business;~~

27 ~~(b) a creditor interest in an insolvent business;~~

28 ~~(c) an employment or prospective employment for which negotiations have begun;~~

29 ~~(d) an ownership interest in real or personal property;~~

30 ~~(e) a loan or other debtor interest; or~~

1 ~~(f) a directorship or officership in a business.~~

2 (3) "GIFT OF SUBSTANTIAL VALUE" DOES NOT INCLUDE:

3 (A) A GIFT THAT IS NOT USED AND THAT, WITHIN 30 DAYS AFTER RECEIPT, IS RETURNED TO
4 THE DONOR OR DELIVERED TO A CHARITABLE ORGANIZATION OR THE STATE AND THAT IS NOT
5 CLAIMED AS A CHARITABLE CONTRIBUTION FOR FEDERAL INCOME TAX PURPOSES;

6 (B) FOOD AND BEVERAGES CONSUMED ON THE OCCASION WHEN PARTICIPATION IN A
7 CHARITABLE, CIVIC, OR COMMUNITY EVENT BEARS A RELATIONSHIP TO THE PUBLIC OFFICER'S OR
8 PUBLIC EMPLOYEE'S OFFICE OR EMPLOYMENT OR WHEN THE OFFICER OR EMPLOYEE IS IN
9 ATTENDANCE IN AN OFFICIAL CAPACITY;

10 (C) EDUCATIONAL MATERIAL DIRECTLY RELATED TO OFFICIAL GOVERNMENTAL DUTIES;

11 (D) AN AWARD PUBLICLY PRESENTED IN RECOGNITION OF PUBLIC SERVICE; OR

12 (E) EDUCATIONAL ACTIVITY THAT:

13 (I) DOES NOT PLACE OR APPEAR TO PLACE THE RECIPIENT UNDER OBLIGATION;

14 (II) CLEARLY SERVES THE PUBLIC GOOD; AND

15 (III) IS NOT LAVISH OR EXTRAVAGANT.

16 ~~(5)(3)~~ "Official act" or "official action" means a vote, decision, recommendation, approval,
17 disapproval, or other action, including inaction, which that involves the use of discretionary authority.

18 (4) "Private interest" means an interest held by an individual ~~or the individual's spouse or minor~~
19 children that is:

20 (a) an ownership interest in a business;

21 (b) a creditor interest in an insolvent business;

22 (c) an employment or prospective employment for which negotiations have begun;

23 (d) an ownership interest in real property;

24 (e) a loan or other debtor interest; or

25 (f) a directorship or officership in a business.

26 (5) "Public employee" means:

27 (a) any temporary or permanent employee of the state or any subdivision of the state;

28 (b) a member of a quasi-judicial board or commission or of a board, commission, or committee with
29 rulemaking authority; and

30 (c) a person under contract to the state.

(6) "Public officer" includes any state officer ~~except a legislator or member of the judiciary~~ or any elected officer of any subdivision of the state.

(7) (a) "State agency" includes:

- (i) the state;
- (ii) the legislature and its committees;
- (iii) all executive departments, boards, commissions, committees, bureaus, and offices;
- (iv) the university system; and
- (v) all independent commissions and other establishments of the state government ~~except the courts.~~

(b) The term does not include the judicial branch.

(8) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102."

Section 2. Section 2-2-103, MCA, is amended to read:

"2-2-103. Public trust -- public duty. (1) The holding of public office or employment is a public trust, created by the confidence ~~which~~ that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out ~~his~~ the individual's duties for the benefit of the people of the state.

(2) A public officer, legislator, or public employee whose conduct departs from ~~his fiduciary~~ the person's public duty is liable to the people of the state ~~as a trustee of property, is liable to a beneficiary under 72-34-105, and shall suffer such other liabilities as a private fiduciary would suffer~~ is subject to the penalties provided in this part for abuse of ~~his~~ the public's trust. ~~The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency.~~

(3) ~~The following sections set~~ This part sets forth various rules of conduct, the transgression of any of which is, ~~as such,~~ a violation of ~~fiduciary~~ public duty, and various ethical principles, the transgression of any of which is ~~not, as such,~~ a violation of ~~fiduciary duty~~ must be avoided.

(4) (a) The enforcement of this part for:

(i) state officers, LEGISLATORS, and STATE employees is provided for in [sections 16 and 17 15 AND 16];

~~(iii) legislators is provided for in [section 15 14];~~

~~(iii) (II) local government officers and employees is provided for in [section 22 21].~~

(b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government."

Section 3. Section 2-2-104, MCA, is amended to read:

"2-2-104. Rules of conduct for all public officers, legislators, and public employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary the actor's public duty. A public officer, legislator, or public employee may not:

~~(a) disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal economic interests; or~~

(A) DISCLOSE OR USE CONFIDENTIAL INFORMATION ACQUIRED IN THE COURSE OF OFFICIAL DUTIES IN ORDER TO FURTHER SUBSTANTIALLY THE INDIVIDUAL'S PERSONAL ECONOMIC INTERESTS;

~~(b)(B) accept a gift of substantial value or a substantial AN economic benefit tantamount to a gift: (i)(a)(C) which that would tend improperly to influence a reasonable person in his the person's position to depart from the faithful and impartial discharge of his the person's public duties; or~~

~~(ii)(b)(D) which he that the person knows or which that a reasonable person in his that position should know under the circumstances is primarily for the purpose of rewarding him the person for official action he has taken..~~

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such the services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

(3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:

(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for its costs in THE SALARY PAID FOR performing the function from which the officer, legislator, or employee is absent; or

1 (ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by
2 the amount of salary received from the other public employer in order to avoid duplicate compensation for
3 the overlapping hours.

4 (b) Subsection (3)(a) does not prohibit a public officer, legislator, or public employee from receiving
5 income from the use of accrued leave or compensatory time during the period of overlapping employment.

6 (C) IN ORDER TO DETERMINE COMPLIANCE WITH THIS SUBSECTION (3), A PUBLIC OFFICER,
7 LEGISLATOR, OR PUBLIC EMPLOYEE SUBJECT TO THIS SUBSECTION (3) SHALL DISCLOSE THE
8 AMOUNTS RECEIVED FROM THE TWO SEPARATE PUBLIC EMPLOYMENT POSITIONS TO THE
9 COMMISSIONER OF POLITICAL PRACTICES."

10
11 **Section 4. Section 2-2-105, MCA, is amended to read:**

12 **"2-2-105. Ethical ~~principles~~ requirements for public officers and public employees. (1) The**
13 **principles requirements in this section are intended as guides to rules of conduct, and ~~do not constitute~~**
14 **violations as such constitute a breach of the public trust and public duty of office or employment in state**
15 **or local government.**

16 **(2) A EXCEPT AS PROVIDED IN SUBSECTION (4), A public officer or public employee ~~should~~ may**
17 **not acquire an interest in any business or undertaking ~~which he~~ that the officer or employee has reason to**
18 **believe may be directly and substantially affected to its economic benefit by official action to be taken by**
19 **his the officer's or employee's agency.**

20 **(3) A public officer or public employee ~~should~~ may not, within ~~the~~ 12 months following the**
21 **voluntary termination of his office or employment, obtain employment in which he the officer or employee**
22 **will take direct advantage, unavailable to others, of matters with which he the officer or employee**
23 **directly involved during his a term of office or during employment. These matters are rules, other than rules**
24 **of general application, ~~which he~~ that the officer or employee actively helped to formulate and applications,**
25 **claims, or contested cases in the consideration of which he the officer or employee was an active**
26 **participant.**

27 **(4) WHEN A PUBLIC EMPLOYEE WHO IS A MEMBER OF A QUASI-JUDICIAL BOARD OR**
28 **COMMISSION OR OF A BOARD, COMMISSION, OR COMMITTEE WITH RULEMAKING AUTHORITY IS**
29 **REQUIRED TO TAKE OFFICIAL ACTION ON A MATTER AS TO WHICH THE PUBLIC EMPLOYEE HAS A**
30 **CONFLICT CREATED BY A PERSONAL OR PRIVATE INTEREST THAT WOULD DIRECTLY GIVE RISE TO**

1 AN APPEARANCE OF IMPROPRIETY AS TO THE PUBLIC EMPLOYEE'S INFLUENCE, BENEFIT, OR
2 DETRIMENT IN REGARD TO THE MATTER, THE PUBLIC EMPLOYEE SHALL DISCLOSE THE INTEREST
3 CREATING THE CONFLICT PRIOR TO PARTICIPATING IN THE OFFICIAL ACTION.

4 ~~(4)(5)~~ A public officer or public employee ~~should~~ may not:
5 ~~(a)~~ perform an official act directly and substantially affecting a business or other undertaking to its
6 economic detriment when ~~he~~ the officer or employee has a substantial ~~financial~~ personal interest in a
7 competing firm or undertaking; ~~or~~
8 ~~(b) disclose or use confidential information acquired in the course of official duties in order to~~
9 ~~substantially further the officer's or employee's private interests."~~

10
11 **Section 5.** Section 2-2-111, MCA, is amended to read:

12 **"2-2-111. Rules of conduct for legislators.** Proof of commission of any act enumerated in this
13 section is proof that the legislator committing the act has breached ~~his fiduciary~~ the legislator's public duty.

14 A legislator may not:

15 (1) accept a fee, contingent fee, or any other compensation, except ~~his~~ the official compensation
16 provided by statute, for promoting or opposing the passage of legislation;

17 (2) seek other employment for ~~himself~~ the legislator or solicit a contract for ~~his~~ the legislator's
18 services by the use of ~~his~~ the office."

19
20 **Section 6.** Section 2-2-112, MCA, is amended to read:

21 **"2-2-112. Ethical ~~principles~~ requirements for legislators.** (1) The ~~principles~~ requirements in this
22 section are intended ~~only as guides to~~ rules for legislator conduct, and ~~do not constitute~~ as such
23 constitute a breach of the public trust of legislative office.

24 ~~(2) A legislator has a responsibility to the legislator's constituents to participate in all matters~~
25 ~~affecting the constituents~~ AS REQUIRED IN THE JOINT RULES OF THE LEGISLATURE. A legislator
26 concerned with the possibility of a conflict ~~should~~ MAY briefly present the facts to the committee of that
27 house that is assigned the determination of ethical issues. The committee shall advise the legislator as to
28 whether the legislator should disclose the interest prior to voting on the issue pursuant to the provisions
29 of subsection (5). The legislator shall ~~shall~~ MAY vote on ~~the~~ AN issue ON WHICH THE LEGISLATOR HAS A
30 CONFLICT, after disclosing the interest.

1 ~~(2)(3)~~ When a legislator ~~must~~ is required to take official action on a legislative matter as to which
2 ~~he~~ the legislator has a conflict created by a personal or ~~financial~~ private interest ~~which that~~ would be
3 directly and substantially affected by give rise to an appearance of impropriety as to the legislator's
4 influence, benefit, or detriment in regard to the legislative matter, he should consider disclosing or
5 eliminating the legislator shall disclose the interest creating the conflict or abstaining from prior to
6 participating in the official action, as provided in subsections (2) and (5) and the joint rules of the
7 legislature. In making ~~his a~~ decision, ~~he should~~ the legislator shall further consider:

8 (a) whether the conflict impedes ~~his~~ the legislator's independence of judgment;

9 (b) the effect of ~~his~~ the legislator's participation on public confidence in the integrity of the
10 legislature; and

11 (c) whether ~~his~~ the legislator's participation is likely to have any significant effect on the disposition
12 of the matter; and

13 (d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family
14 benefit could arise from the legislator's participation.

15 ~~(3)(4)~~ A conflict situation does not arise from legislation or legislative duties affecting the entire
16 membership of a profession, occupation, or class.

17 ~~(4)(5)~~ If a A legislator ~~elects to~~ shall disclose the an interest creating the a conflict, ~~he shall do so~~
18 as provided in the ~~joint~~ rules of the legislature. A legislator who is a member of a profession, occupation,
19 or class affected by legislation is not required to disclose an interest unless the class contained in the
20 legislation is so narrow that the vote will have a direct personal impact on the legislator. A legislator may
21 seek a determination from the appropriate committee provided for in [section 45 14]."

22
23 Section 7. Section 2-2-121, MCA, is amended to read:

24 "2-2-121. Rules of conduct for state public officers and state public employees. (1) Proof of
25 commission of any act enumerated in ~~this section~~ subsection (2) is proof that the actor has breached his
26 fiduciary a public duty.

27 (2) A state public officer or a state public employee may not:

28 (a) use state public time, facilities, equipment, supplies, personnel, or funds ~~or equipment~~ for his
29 the officer's or employee's private business purposes;

30 (b) engage in a substantial financial transaction for ~~his~~ the officer's or employee's private business

purposes with a person whom ~~he~~ the officer or employee inspects or supervises in the course of ~~his~~ official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from ~~his~~ the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any ~~state~~ agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which ~~he~~ the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom ~~he~~ the officer or employee regulates in the course of ~~his~~ official duties without first giving written notification to ~~his~~ the officer's or employee's supervisor and department director.

(3) ~~(a)~~ A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds for any political or campaign activity persuading or affecting a political decision unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public official, the official's staff, or the legislative staff in the normal course of duties.

(b) Subsection (3)(a) does not prohibit an elected public official from issuing public statements concerning matters within the scope of the official's office. However, a document that is published pursuant to this subsection (3) and that is aimed at supporting or opposing a political committee, a candidate, or a ballot issue must include a written statement disclosing the public costs incurred to produce the document. The statement must meet the specifications described in 18-7-306, and the costs must be estimated based on the factors listed in 18-7-307. Documentation of the cost of publication must be filed with the commissioner of political practices. THIS SUBSECTION DOES NOT APPLY TO THE PREPARATION OF OFFICIAL VOTER INFORMATION PAMPHLETS.

(4) ~~(a)~~ A state employee shall notify the employee's immediate supervisor that a potential conflict of interest exists MAY NOT PARTICIPATE IN A PROCEEDING when AN ORGANIZATION OF WHICH THE EMPLOYEE IS AN OFFICER OR DIRECTOR IS:

(i)(A) an organization of which the employee is a member is involved in a proceeding before the

1 employing agency that is within the scope of the employee's job duties; or

2 ~~(iii)(B) the employee is a member of or affiliated with any organization attempting to influence a~~
3 local, state, or federal proceeding in which the employee represents the state.

4 ~~(b) The employee's supervisor shall make the disclosed information available to an interested~~
5 person upon the person's request.

6 (5) A state officer or state employee may not engage in any activity, including lobbying, as defined
7 in 5-7-102, on behalf of an organization of which the officer or employee is a member while performing the
8 officer's or employee's job duties. THE PROVISIONS OF THIS SUBSECTION DO NOT PROHIBIT AN
9 OFFICER OR EMPLOYEE FROM PERFORMING CHARITABLE FUNDRAISING ACTIVITIES IF APPROVED BY
10 THE EMPLOYEE'S SUPERVISOR OR AUTHORIZED BY LAW.

11 ~~(3)(6)~~ A department head or a member of a quasi-judicial or rulemaking board may perform an
12 official act notwithstanding the provisions of subsection (2)(e) if his participation is necessary to the
13 administration of a statute and if he the person complies with the voluntary disclosure procedures under
14 2-2-131.

15 ~~(4)(7)~~ Subsection (2)(d) does not apply to a member of a board, commission, council, or committee
16 unless he the member is also a full-time state public employee.

17 (8) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon
18 conviction shall be punished by a fine of not less than \$50 or more than \$1,000, by imprisonment in the
19 county jail for not more than 6 months, or by both. A civil proceeding under [section ~~46~~ 15] or [section
20 ~~22~~ 21] does not preclude an action under this subsection."

21
22 **Section 8. Section 2-2-125, MCA, is amended to read:**

23 **"2-2-125. Rules of conduct for local government officers and employees. (1) Proof of commission**
24 **of any act enumerated in this section is proof that the actor has breached his fiduciary a public duty**
25 **subjecting the actor to disciplinary action by the employing entity.**

26 **(2) An officer or employee of local government may not:**

27 **(a) engage in a substantial financial transaction for his the officer's or employee's private business**
28 **purposes with a person whom he the officer or employee inspects or supervises in the course of his official**
29 **duties; or**

30 **(b) perform an official act directly and substantially affecting to its economic benefit a business or**

1 other undertaking in which ~~he~~ the officer or employee either has a substantial financial interest or is
2 engaged as counsel, consultant, representative, or agent.

3 (3) A Notwithstanding the provisions of subsection (2), a member of the governing body of a local
4 government may perform an official act notwithstanding this section when his the member's participation
5 is necessary to obtain a quorum or otherwise enable the body to act, ~~if he complies with the voluntary~~
6 ~~disclosure procedures under 2-2-131~~ The member shall disclose the interest creating the appearance of
7 impropriety."

8
9 Section 9. Section 2-2-131, MCA, is amended to read:

10 "2-2-131. ~~Voluntary disclosure~~ Disclosure. A public officer or public employee ~~may~~ shall, prior to
11 acting in a manner ~~which~~ that may impinge on ~~his fiduciary~~ public duty, including the award of a permit,
12 contract, or license, disclose the nature of ~~his~~ the private interest ~~which~~ that creates the conflict. ~~He~~ The
13 public officer or public employee shall make the disclosure in writing to the secretary of state, listing the
14 amount of ~~his financial~~ private interest, if any, the purpose and duration of ~~his~~ the person's services
15 rendered, if any, and the compensation received for the services or ~~such~~ other information ~~as~~ that is
16 necessary to describe ~~his~~ the interest. If ~~he~~, the public officer or public employee then performs the official
17 act involved, ~~he~~ the officer or employee shall state for the record the fact and summary nature of the
18 interest disclosed at the time of performing the act."

19
20 Section 10. Section 2-2-302, MCA, is amended to read:

21 "2-2-302. Appointment of relative to office of trust or emolument unlawful -- exceptions --
22 publication of notice. (1) Except as provided in subsection (2), it is unlawful for a person or member of
23 any board, bureau, or commission or employee at the head of a department of this state or any political
24 subdivision of this state to appoint to any position of trust or emolument any person related or connected
25 by consanguinity within the fourth degree or by affinity within the second degree.

26 (2) The provisions of this section and 2-2-303 do not apply to:

27 (a) a sheriff in the appointment of a person as a cook or an attendant;

28 (b) school district trustees if all the trustees, with the exception of any trustee who is related to
29 the person being appointed and who must abstain from voting for the appointment, approve the
30 appointment of a person related to a trustee;

(c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days; or

(d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom ~~he~~ the person is related assumed the duties of the office;

(e) the employment of election judges; or

(f) the employment of pages or temporary session staff by the legislature.

(3) Prior to the appointment of a person referred to in subsection (2), the school district trustees shall give written notice of the time and place of their intended action. The notice must be published at least 15 days prior to the trustees' intended action in a newspaper of general circulation in the county in which the school district is located."

Section 11. Section 2-18-102, MCA, is amended to read:

"2-18-102. Personnel administration -- general policy setting. (1) Except as otherwise provided by law or collective bargaining agreement, the department shall:

(a) encourage and exercise leadership in the development of effective personnel administration within the several agencies in the state and make available the facilities of the department to this end;

(b) foster and develop programs for recruitment and selection of capable persons for permanent, seasonal, temporary, and other types of positions and for the improvement of employee effectiveness, including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation for productivity and retention in permanent status;

(c) foster, develop, and promote job sharing in agencies;

(d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the policies made ~~thereunder~~ under parts 1 and 2 and report the findings and recommendations to the governor;

(e) establish policies, procedures, and forms for the maintenance of records of all employees in the state service;

(f) apply and carry out parts 1 and 2 and the policies ~~thereunder~~ under parts 1 and 2 and perform any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

(2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the

1 state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided
2 that ~~such~~ the agencies remain in compliance with policies, procedures, timetables, and standards
3 established by the department.

4 (3) The department shall develop and issue personnel policies for the state. Adequate public notice
5 shall must be given to all interested parties of proposed changes or additions to the personnel policies
6 before the date they are to take effect. If requested by any of the affected parties, the department shall
7 schedule a public hearing on proposed changes or additions to the personnel policies before the date they
8 are to take effect.

9 (4) The department shall develop model rules of conduct for all state employees based upon the
10 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the
11 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional
12 rules appropriate to the specific circumstances of the agency."

13
14 Section 12. Section 5-7-213, MCA, is amended to read:

15 "5-7-213. ~~Disclosure by elected officials.~~ (1) (a) Prior to December 15 of each even-numbered
16 year, each elected official, or official elect member of a quasi-judicial board or commission, or department
17 director shall file with the commissioner a business disclosure statement on a form provided by the
18 commissioner. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this
19 subsection (1)(a) during the same period.

20 (b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of
21 the time that the candidate files for office, file a business disclosure statement with the commissioner on
22 a form provided by the commissioner.

23 (c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b)
24 is required to file the business disclosure statement at the earlier of the time of submission of the person's
25 name for confirmation or the assumption of the office.

26 (2) The statement shall must provide the following information:

27 (a) the name, address, and type of business of such the individual and each member of such the
28 individual's immediate family;

29 (b) each present or past employing entity from which benefits, including retirement benefits, are
30 currently received by the individual and each member of the individual's immediate family;

1 (c) each business, firm, corporation, partnership, and other business or professional entity or trust
2 in which the individual or a member of the individual's immediate family holds an interest;

3 (d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual or a
4 member of the individual's immediate family is an officer or director, regardless of whether or not the entity
5 is organized for profit;

6 (e) a brief description of the purpose of an entity described in subsections (2)(c) and (2)(d); and

7 (f)(E) all real property, other than a personal residence, in which the individual or a member of the
8 individual's immediate family holds an interest. Real property may be described by general description. For
9 this purpose "immediate family" includes the individual's spouse and minor children only.

10 (2)(3) No such An individual may not assume or continue to exercise the powers and duties of the
11 office to which that individual has been elected or appointed until such the statement has been filed as
12 provided in subsection (1).

13 (3)(4) The commissioner shall make such the business disclosure statements available to any
14 individual upon request.

15 (5) For purposes of this section, "immediate family" means the individual's spouse and minor
16 children."

17
18 **Section 13. Section 13-35-226, MCA, is amended to read:**

19 **"13-35-226. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in**
20 **paying his employees the salary or wages due them, to include with their pay the name of any candidate**
21 **or any political mottoes, devices, or arguments containing threats or promises {express or implied},**
22 **calculated or intended to influence the political opinions or actions of the employees. It is unlawful for an**
23 **employer to exhibit in a place where his the employer's workers or employees may be working any handbill**
24 **or placard containing any threat, promise, notice, or information that, in case any particular ticket or**
25 **political party, organization, or candidate is elected, work in his the employer's place or establishment will**
26 **cease, in whole or in part, or will be continued or increased; his the employer's place or establishment will**
27 **be closed; the salaries or wages of his the workers or employees will be reduced or increased; or other**
28 **threats or promises {express or implied}, intended or calculated to influence the political opinions or actions**
29 **of his the employer's workers or employees. This section shall apply applies to corporations, individuals,**
30 **and public officers and employees.**

(2) ~~No~~ A person may not attempt to coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(3) ~~No~~ A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at his the place of employment. However, ~~nothing in~~ subject to 2-2-121, this section is not intended to restrict the right of a public employee to express his personal political views.

(4) Any person who violates the provisions of this section shall be fined an amount not to exceed \$1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate offense."

~~NEW SECTION. Section 14. Filing tax returns. (1) It is the responsibility of legislators, public officers, and public employees to determine on an annual basis whether they are required to file tax returns with the state of Montana and to file a complete return in a timely manner, if required.~~

~~(2) The department of revenue shall provide to the commissioner of political practices information necessary to determine compliance with this section, whether or not the information is confidential. The commissioner of political practices shall keep the information confidential unless it is necessary to prove that a violation of this section has occurred.~~

NEW SECTION. Section 14. Ethics committees. (1) Each house of the legislature shall establish an ethics committee. The committee must consist of two members of each political party. The committees may meet jointly. Each committee shall educate members concerning the provisions of this part concerning legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The joint committee may consider matters affecting the entire legislature.

(2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for enforcement of the provisions of this part concerning legislators.

NEW SECTION. Section 15. Enforcement for state officers, LEGISLATORS, and state employees.
(1) (a) A person alleging a violation of this part by a state officer, LEGISLATOR, or state employee may file a complaint with the commissioner of political practices. The commissioner shall request any

1 information necessary to make a determination from the complainant or the person who is the subject of
2 the complaint and may issue subpoenas.

3 (b) Unless the complaint is referred to the county attorney under subsection (1)(c), the
4 commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter
5 4, part 6. The commissioner shall issue a decision based upon the record established before the
6 commissioner.

7 (c) If it appears to the commissioner that a complaint alleges criminal conduct, the commissioner
8 shall stay the proceedings under this section and refer the matter to the appropriate county attorney.

9 (2) If the commissioner determines that a violation of this part has occurred, the commissioner may
10 impose an administrative penalty of not less than \$50 or more than \$1,000, and if the violation was
11 committed by a state employee, the commissioner may also recommend that the employing agency
12 discipline the employee. The commissioner may assess the costs of the proceeding against the person
13 bringing the charges if the commissioner determines that a violation did not occur or against the officer or
14 employee if the commissioner determines that a violation did occur.

15 (3) The decision of the commissioner may be appealed to the ethics commission as provided in
16 [section 47 16].

17 (4) EXCEPT FOR RECORDS MADE PUBLIC IN THE COURSE OF A HEARING, A COMPLAINT AND
18 RECORDS OBTAINED OR PREPARED BY THE COMMISSIONER IN CONNECTION WITH AN INVESTIGATION
19 OR COMPLAINT ARE NOT OPEN FOR PUBLIC INSPECTION. THE COMMISSIONER'S DECISION ISSUED
20 AFTER A HEARING IS A PUBLIC RECORD OPEN TO INSPECTION.

21 (5) THE COMMISSIONER MAY ADOPT RULES TO CARRY OUT THE RESPONSIBILITIES AND
22 DUTIES ASSIGNED BY THIS PART.

23
24 NEW SECTION. **Section 16. Administrative appeal.** (1) The ethics commission shall provide a
25 hearing on the record, when requested in writing by a party to an issue that has been decided by the
26 commissioner of political practices. The appeal must be requested within 60 days of a decision by the
27 commissioner.

28 (2) The hearing is limited to matters contained in the record established before the commissioner.
29 The commission may affirm, modify, or reverse a decision of the commissioner.

30 (3) A decision is rendered when signed by three or more commission members subscribing to the

1 decision and must be issued within 30 calendar days after submission of the request for an opinion.

2 (4) If the decision is appealed, as provided in Title 2, chapter 4, part 7, the district court may award
3 costs and fees to the prevailing party.

4
5 **NEW SECTION.** Section 17. Ethics commission. (1) There is an ethics commission attached to
6 the office of the commissioner of political practices for administrative purposes only.

7 (2) The commission consists of five members. The members are appointed in the same manner
8 as prescribed in 5-1-102, except that the presiding officer and vice presiding officer must be chosen as
9 provided in subsection (6) of this section. A member of the commission must be a citizen of the United
10 States and a resident of Montana. A member of the commission may not be a:

11 (a) public official;

12 (b) public employee, except as the fifth member, who must be chosen by consensus of the other
13 members;

14 (c) candidate;

15 (d) lobbyist or lobbyist's principal; or

16 (e) member of the immediate family of an individual listed in subsections (2)(a) through (2)(d).

17 (3) A member of the commission serves a term of 4 years. However, the initial members of the
18 commission shall serve the following terms:

19 (a) One member shall serve a term of 1 year.

20 (b) One member shall serve a term of 2 years.

21 (c) One member shall serve a term of 3 years.

22 (d) Two members shall serve terms of 4 years.

23 (4) An individual may not serve more than two consecutive terms as a member of the commission.
24 A member of the commission continues in office until a successor is appointed and has qualified.

25 (5) (a) If a vacancy occurs on the commission, the appointing authority of the vacant position shall
26 appoint a successor.

27 (b) If at the time that a vacancy occurs the appointing authority is of a different political party than
28 that of the original appointing authority, the majority or minority leader in the same house who is of the
29 same political party as the appointing authority that made the original appointment of the commissioner
30 whose position is vacated shall appoint the successor.

(6) The presiding officer and vice presiding officer of the commission must be elected by a majority of the members of the commission. The presiding officer and vice presiding officer shall serve in those positions for 1 year and may be reelected. The presiding officer presides at meetings of the commission. The vice presiding officer presides in the absence or disability of the presiding officer.

(7) A member of the commission may not receive a salary but is entitled to expenses as provided in Title 2, chapter 18, part 5.

NEW SECTION. Section 18. Meetings -- quorum. The ethics commission shall meet at the call of the presiding officer or a majority of its members when an appeal from a decision of the commissioner of political practices UNDER THIS PART is requested. A quorum consists of three or more members. An affirmative vote of three or more members is necessary for the issuance of a decision.

NEW SECTION. Section 19. Prohibition on political activity by commission members. A member of the ethics commission may not participate in political activity or in a political campaign during the term of office. A member of the commission may not:

- (1) make a financial contribution to a candidate;
- (2) make a financial contribution to a political committee; or
- (3) knowingly attend a fundraiser held for the benefit of a candidate or political committee.

NEW SECTION. Section 20. Prohibition on lobbying activity. A member of the ethics commission may not be a registered lobbyist or participate in lobbying activities that would require the individual to register as a lobbyist unless the lobbyist activities are conducted on behalf of the commission and are permitted under state law.

NEW SECTION. Section 21. Enforcement for local government. (1) Except as provided in subsection (5), a person alleging a violation of this part by a local government officer or local government employee shall notify the county attorney of the county where the local government is located. The county attorney shall request from the complainant or the person who is the subject of the complaint any information necessary to make a determination concerning the validity of the complaint.

(2) If the county attorney determines that the complaint is justified, the county attorney may bring

1 an action in district court seeking a civil fine of not less than \$50 or more than \$1,000. If the county
2 attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal
3 charges against the officer or employee.

4 (3) If the county attorney declines to bring an action under this section, the person alleging a
5 violation of this part may file a civil action in district court seeking a civil fine of not less than \$50 or more
6 than \$1,000. In an action filed under this subsection, the court may assess the costs and attorney fees
7 against the person bringing the charges if the court determines that a violation did not occur or against the
8 officer or employee if the court determines that a violation did occur. The court may impose sanctions if
9 the court determines that the action was frivolous or intended for harassment.

10 (4) The employing entity of a local government employee may take disciplinary action against an
11 employee for a violation of this part.

12 (5) (a) A local government may establish a three-member panel to review complaints alleging
13 violations of this part by officers or employees of the local government. The local government shall
14 establish procedures and rules for the panel. The members of the panel may not be officers or employees
15 of the local government. The panel shall review complaints and may refer to the county attorney
16 complaints that appear to be substantiated.

17 (b) In a local government that establishes a panel under this subsection, a complaint must be
18 referred to the panel prior to making a complaint to the county attorney.

19 (6) For purposes of this section, "local government" means a county, an incorporated city or town,
20 a consolidated government, or a school district.

21
22 **NEW SECTION.** Section 22. Repealer. Section 2-2-132, MCA, is repealed.

23
24 **NEW SECTION.** Section 23. Codification instruction. [Sections 14 through ~~22~~ 21] are intended
25 to be codified as an integral part of Title 2, chapter 2, part 1, and the provisions of Title 2, chapter 2, part
26 1, apply to [sections 14 through ~~22~~ 21].

27
28 **NEW SECTION.** Section 24. Code commissioner instruction. The code commissioner shall
29 renumber section 5-7-213 as an integral part of Title 2, chapter 2, part 1.

30

1 NEW SECTION. Section 25. Severability. If a part of [this act] is invalid, all valid parts that are
2 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
3 applications, the part remains in effect in all valid applications that are severable from the invalid
4 applications.

5
6 NEW SECTION. Section 26. Effective date. [This act] is effective July 1, 1995.

7 -END-